

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8
9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
Cruces, Dona Ana County, New Mexico, commencing on
11 April 10, 2018.

12 For the Plaintiff: Ms. Maria Armijo, Mr. Randy

13 Castellano, Mr. Matthew Beck

14 For the Trial 2 Defendants: Mr. Brock Benjamin;
15 Ms. Cori Harbour-Valdez; Mr. Patrick Burke; Mr. Jim
Castle; Mr. Robert Cooper; Mr. James Lahann; Mr. Joe
16 Shattuck; Mr. John Granberg; Mr. Eduardo Solis;
Mr. Scott M. Davidson; Mr. Richard Sindel; Mr. Billy
17 Blackburn; Mr. Donovan Roberts; Ms. Lisa Torracco; Ms.
Angela Arellanes.

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1 THE COURT: All right. Let's go on the
2 record. I think Ms. Wild has gone out to check on
3 our jury to see where they are.

4 Is there anything we need to discuss before
5 we bring the jury in? Anything new for you, Mr.
6 Burke?

7 MR. BURKE: I just wanted to put on the
8 record I went into the exercise room at my hotel and
9 I thought I recognized -- and it was Carrie
10 Menapace-Corral, and I said, "Are you?"

11 And she said, "Yes."

12 And I said, "I'll excuse myself," and I
13 just wanted that --

14 THE COURT: Okay. I appreciate that. I
15 waved at one of the jurors at my hotel today, but
16 didn't speak. Just waved.

17 Anything else you need to put on the
18 record, Mr. Castle?

19 MR. CASTLE: Yes, Your Honor. I think it
20 was last Thursday that the Court authorized some
21 seizures -- or maybe it wasn't the Court authorizing
22 it, but the Government was going to do seizures of
23 some items in our clients' possession. And we're
24 wondering what the process is going to be here on
25 out. I am concerned because I believe that the taint

1 team is not taking the view that I think they should
2 take, which is: The only thing that they were
3 supposed to seize and collect would be items that
4 would be contraband under the rules of the Marshal
5 Service or whatever facility they're in or things
6 that are evidence of a crime. Like in my client's
7 instance it appears that they've seized documents
8 that we printed off for the client and provided them
9 that were not illegal or not part of discovery or
10 anything of that nature. So I'm trying to figure out
11 what the process is going to be.

12 THE COURT: Have you talked to the taint
13 team?

14 MR. CASTLE: We've communicated, because it
15 was over the weekend, and I didn't have a phone
16 number that was active for them over the weekend.

17 THE COURT: I guess I'm wondering if you
18 could try to talk to them. I know we're all busy in
19 here in the courtroom. Try to talk to them directly.
20 And then if it can't be worked out, we'll try to
21 carve out a time to pipe them back in here and talk
22 to them. Would that work?

23 MR. CASTLE: That would work. I was
24 wondering if the Court could do something generally
25 for us, and that is inform the jury that sometimes

1 Counsel may be getting up to go outside not because
2 we're out having a cigarette or candy, but because
3 we're doing business and we can't do it here in the
4 courtroom. If the Court would do that for us, that
5 would be great, and I can take some time this morning
6 and make that call.

7 THE COURT: Any objection to that, Ms.
8 Armijo?

9 MS. ARMIJO: Well, yeah. I think that --
10 well, as long as it works both ways. If they're
11 going to be calling the taint team, we would be
12 allowed to call the taint team. I think so far all
13 communications have been through the Court. I was
14 unaware that they have reached out to the taint team.
15 So I guess it works both ways. But what I was
16 suggesting is the request from Mr. Eicker was, what
17 does he do with the nonprivileged material? And it's
18 not just gathering U.S. Marshal contraband. This was
19 specific to this case in reference to the court
20 order, because these defendants -- and I'm using
21 "these defendants" broadly, not just these people
22 here in court -- are not to have certain documents in
23 their possession. So I think that Mr. Eicker may not
24 be able to figure that out.

25 So whatever is nonprivileged I think does

1 need be shown to the prosecution to determine if it
2 is under the order or not, and then disclosed
3 properly. Because if we just give it back to the
4 defense and they're not allowed to have it, it does
5 away with it, number 1; and 2, obviously, the
6 relevance, if they do have, you know -- if they have
7 information on all of the CIs and something that is
8 inculpatory, then obviously that would be important,
9 too. So we, too, will reach out to Mr. Eicker this
10 morning as well.

11 THE COURT: I guess I see a little bit of
12 difference with you reaching out to Eicker without
13 the Court being present and the defendants reaching
14 out. Mr. Eicker is going to protect the Government's
15 interests. That's what you have a taint team for.
16 So if you feel a need to reach out to them, let's do
17 it with everybody present and you making your pitch
18 to the taint team in the presence of the Court and
19 also in the presence of the defendants.

20 I think if Mr. Castle reaches out on behalf
21 of the defendants, the taint team is going to have
22 your interests in mind. And so I don't feel a need
23 to be present for that. They'll take care of your
24 interests.

25 MS. ARMIJO: Then I think we need to set up

1 something or come to an agreement what we do with the
2 nonprivileged, because that was the specific question
3 that he reached out to the Court on, and I think
4 that's what needs to be decided.

5 THE COURT: Okay. Well, I mean, we have
6 rules in place. If we need to revisit those rules,
7 we can. But we haven't had any trouble here until
8 just now about what should be in the cell. So why
9 don't y'all -- if there is a dispute, I can tell you
10 what should be in the cell or not. But we haven't
11 had any problems for months and months, because the
12 rules have been clear, so...

13 MS. ARMIJO: And I would agree with that.

14 THE COURT: Let's do this. I think we've
15 got the jury available. Let's try to take this up at
16 a different time.

17 Ms. Wild, is the jury all here and
18 everything?

19 THE CLERK: Yes, sir.

20 THE COURT: Look good from that angle?

21 Guys, keep your feet in when we bring the
22 jury in. This is a real important stage, so just
23 keep it in. Remember, no parties or attorneys stand.

24 (The venire panel entered the courtroom.)

25 THE COURT: Good morning, everyone. If

1 you'll just go back to your seats that you had all
2 day yesterday, we'll get started.

3 Good morning.

4 MS. DWORE: Good morning.

5 THE COURT: Good morning, everyone. Looks
6 like we've got everybody. Thank y'all. I appreciate
7 you coming back. I also hope you had a good evening
8 in Las Cruces. I went over to the Pecan Grill and
9 shared a steak with my wife. So if you haven't tried
10 the Pecan Grill, I sure enjoy it. I know that Cattle
11 Baron has got some good steaks, too, but I like that
12 Pecan Grill. So if you're back in town or are one of
13 the people that are selected, you might want to check
14 it out while you're here.

15 All right. I'm going to go a little bit
16 further with some of the questions that I had, and
17 then we're going to be turning over this morning for
18 some additional direct voir dire from counsel.

19 So I'll start. Let's see. All right.
20 Mr. Kulpa, I'm going to start with you this morning.
21 What brought you from New York to New Mexico?

22 MR. KULPA: My -- at the time my wife and
23 our two children moved from New York to Las Cruces,
24 because she's now my ex-wife. Because -- she's fine,
25 but she wanted to be closer to home. So at that time

1 I was just starting graduate school, and so I looked
2 for places in the Southwest that would have me, and
3 it just so happened that New Mexico State University
4 Psychology Department was interested in having me as
5 a graduate student. So we came here. In fact, her
6 hometown is Las Cruces, so it worked out for her.
7 And it worked out for me and -- we have three
8 children now. At the time we had two.

9 THE COURT: And what do you do?

10 MR. KULPA: I'm a psychology and education
11 researcher.

12 THE COURT: And what is the SOAR Lab? What
13 is that SOAR Lab?

14 MR. KULPA: The SOAR Lab is the Southwest
15 Outreach Academic Research Lab. It's located in the
16 Education College of New Mexico State University, and
17 we do education research, we evaluate educational
18 programs. We analyze -- we set up studies to analyze
19 the effectiveness of educational programs.

20 THE COURT: And you're working on your
21 Ph.D. now?

22 MR. KULPA: I'm basically finished, so I
23 defended the dissertation about a week and a half
24 ago, and today and tomorrow I have to work on the
25 final revisions of the document and turn that in

1 tomorrow. And then I'll have to do some revisions on
2 formatting issues. But yeah, pretty much done with
3 that.

4 THE COURT: My middle son successfully
5 defended his Ph.D. dissertation in philosophy on
6 February 7.

7 MR. KULPA: Congratulations.

8 THE COURT: Well, yeah. It is a family
9 thing, isn't it?

10 MR. KULPA: Yeah, very.

11 THE COURT: I think he graduated from high
12 school about 2001, so it seems like it's been a long
13 time. And I was in trial on February 7, so I
14 couldn't go back for his dissertation, so I flew in
15 on the weekend and bought him a steak at Delmonico's.
16 Y'all probably think I just eat steak all the time.
17 I was a lot poorer after I bought that steak. I tell
18 you that.

19 You listed dates of unavailability from
20 April 12th through the 14th, later this week.

21 MR. KULPA: Yes. Very early in the morning
22 on the 12th, I would like to fly to Denver and
23 present this work.

24 THE COURT: Okay. And then you had May 23
25 through 27. What's happening then?

1 MR. KULPA: That's a conference. I believe
2 that's Wednesday through Sunday of that week. That's
3 a conference in San Francisco, a larger conference.
4 I'll also present the work there.

5 THE COURT: And the one this week is a
6 conference, as well?

7 MR. KULPA: That's right.

8 THE COURT: I understand how those work,
9 because my son is beginning to go through those, as
10 well.

11 What did your spouse do before the divorce?

12 MR. KULPA: When she was employed, mostly
13 it was as a cosmetologist, doing hair and nails.

14 THE COURT: Did she have a particular
15 employer, or did she do work --

16 MR. KULPA: When I met her, she was working
17 at the Palace Station Casino and Hotel in Las Vegas,
18 Nevada. When we were in New York, she was employed
19 with Seneca Niagara Casino in Niagara Falls, New
20 York, and a few other smaller places.

21 THE COURT: I'm going to ask you a few
22 questions about some of your answers to the
23 questionnaire. One was -- the question was: Is it
24 more likely that a person brought to trial is guilty
25 under the law? And you checked Yes, and then said,

1 "I would assume a person brought to trial is more
2 likely to be guilty than another random person," I
3 think is what it says, "not brought to trial."

4 We talked a little bit about the
5 presumption of innocence yesterday. Is there any
6 inconsistency between your thoughts that you put on
7 the questionnaire and the presumption of innocence?

8 MR. KULPA: No. I would say that I'm
9 capable of presuming any defendant, defendants, here
10 to be innocent until we go to deliberation and
11 determine that they're guilty, if so we do that.

12 Now, my statement about -- I suppose I hold
13 to that statement that a defendant here -- I guess
14 it's sort of an academic point, but that a defendant
15 here is -- and this could probably be shown -- that a
16 defendant here is more likely to be guilty of the
17 crimes charged here than, say, somebody -- the
18 average random person that I choose off the street.
19 I don't want to split hairs. But let me say that I
20 can certainly presume these defendants here innocent,
21 and I will not presume them guilty until we've
22 reviewed the facts and determined that.

23 THE COURT: All right. I wanted to ask you
24 a question about one of your answers to the -- about
25 tattoos. You said, "I'm biased against them a very

1 small amount." You may see some tattoos in this
2 case. Can you still be fair and impartial depending
3 on -- well, depending on who has those tattoos or
4 it's shown that they have the tattoos?

5 MR. KULPA: Yes, I believe I can. I
6 just -- my answer just, you know, admitted some bias
7 that I believe I have. But knowing that I have that,
8 I can adjust for it.

9 THE COURT: We talked a little bit about
10 your schedule. If you were selected for this jury,
11 would you be able to serve? I know that it would
12 interfere with some things, but would you be able to
13 do it?

14 MR. KULPA: I would just like to say that I
15 really would like to ask to not be selected at this
16 time. I'm very happy to serve in the future, but I'd
17 just ask to please be excused this time. This is a
18 pretty pivotal point in my career and life and my
19 family's life, having just finished the dissertation,
20 and I need to go and present this work to have
21 opportunities for employment in the near future. My
22 employment at the SOAR Lab ends in May. It would be
23 very hard. It would be very not good, I think, now.
24 I mean, I would love to serve, but I would very much
25 prefer not to at this point.

1 THE COURT: All right. Thank you,
2 Mr. Kulpa.

3 Ms. Williams, I mentioned yesterday I was
4 from Hobbs, my wife is from Hobbs, my parents still
5 live there. You don't know Weldon and Shirley
6 Browning, do you? Live over on Stevens Drive?

7 MS. WILLIAMS: I do not.

8 THE COURT: Did you know where Hodgepodge
9 and Art was?

10 MS. WILLIAMS: I do, Your Honor, yes.

11 THE COURT: That was my mom's store there.
12 Did you ever go in there?

13 MS. WILLIAMS: I did not, but a friend of
14 mine lives in that house now.

15 THE COURT: Okay. I was going to mention
16 to Mr. Troy that I did mention you to my wife and she
17 knew you from Taylor Baptist. She said your family
18 went to Taylor Baptist. She remembered you right off
19 the bat.

20 MR. TROY: I know everyone from Hobbs.

21 THE COURT: Her name was Jan Ramey. She
22 was blond, played the piano. Ring any bells with
23 you?

24 MS. WILLIAMS: Yeah.

25 THE COURT: Her dad owned Jack's Office

1 Supply downtown.

2 Ms. Williams, what brought you from Texas
3 to New Mexico?

4 MS. WILLIAMS: My husband was in the oil
5 field and he got transferred temporarily to New
6 Mexico about 30 years ago.

7 THE COURT: My dad had a temporary job in
8 Lea County for a while, too, and he was there --
9 they're still there.

10 MS. WILLIAMS: Some of my roots are there.

11 THE COURT: There you are. And what did
12 you do?

13 MS. WILLIAMS: I'm a nurse. I work in a
14 nursing home.

15 THE COURT: And who is your employer?

16 MS. WILLIAMS: My employer is Desert
17 Springs Nursing and Rehab.

18 THE COURT: And what did your spouse do
19 before becoming disabled?

20 MS. WILLIAMS: My husband worked in the oil
21 field. He worked for a company named DCP Midstream.
22 He did corrosion prevention on pipelines.

23 THE COURT: And how has your hearing been
24 in the courtroom?

25 MS. WILLIAMS: It's been fine.

1 THE COURT: The acoustics work for you
2 here?

3 MS. WILLIAMS: It has.

4 THE COURT: If people talk in microphones,
5 you're okay?

6 MS. WILLIAMS: Yes.

7 THE COURT: All right. Let me ask you
8 about a couple of your answers to some of the
9 questions on the questionnaire. This one is: Do you
10 think if a person is brought to trial, there must be
11 some truth to the charge? And you said, "Yes, the
12 grand jury had to have evidence." How do you kind of
13 square your thoughts there with the presumption of
14 innocence?

15 MS. WILLIAMS: Yeah, I think that I can
16 presume they're innocent, yes.

17 THE COURT: All right. And can you kind of
18 put aside how we got here, and anything about the
19 grand jury, just put that aside and just focus on the
20 evidence here?

21 MS. WILLIAMS: Yes, I can.

22 THE COURT: Another question and answer
23 that you had was: "If, after hearing the evidence,
24 you thought the defendant could be guilty but you
25 were not convinced beyond a reasonable doubt that he

1 is guilty, would you be able to return a verdict of
2 not guilty?" And you checked No. Is that still your
3 answer, or -- and if it is, what's your thinking?

4 MS. WILLIAMS: No, I think that probably I
5 misunderstood the question.

6 THE COURT: Okay. So if you think there is
7 a chance they could be guilty but the Government
8 hasn't proved it beyond a reasonable doubt --

9 MS. WILLIAMS: Yes, sir.

10 THE COURT: -- you could return a verdict
11 of not guilty?

12 MS. WILLIAMS: Yes.

13 THE COURT: All right. And you put, "It
14 has to be proven," and you know it has to be proven
15 beyond a reasonable doubt?

16 MS. WILLIAMS: Yes.

17 THE COURT: All right. And you would hold
18 the Government to that burden?

19 MS. WILLIAMS: Yes.

20 THE COURT: And one other question I was
21 going to ask about. It says, "What thoughts, if any,
22 do you have about tattoos?" And you said you're not
23 in favor of multiple visible tattoos. If you see
24 some pictures of tattoos, do you think you can still
25 be fair and impartial to all the parties here?

1 MS. WILLIAMS: Yes, I think I can overlook
2 that.

3 THE COURT: Thank you, Ms. Williams, I
4 appreciate it.

5 Mr. Kennedy, you're all the way down from
6 Farmington. Thank you very much. What do you do?

7 MR. KENNEDY: Oh, by trade I'm an
8 operations manager. I usually am in the energy and
9 construction field. Currently I'm working as a
10 district supervisor for UniFirst.

11 THE COURT: What is UniFirst?

12 MR. KENNEDY: UniFirst is a uniform company
13 that also services mats and consumables for small
14 businesses and large corporations alike, most notably
15 the United States Postal Service.

16 THE COURT: Let me ask you about a couple
17 of questions that you had. They are kind of related.
18 One is: Do you think, if a person is brought to
19 trial, there must be some truth to the charges? And
20 then we had a similar question a little bit later.
21 If a person brought to trial as a member of a prison
22 gang and that gang is allegedly involved in murder,
23 assault, and drug-trafficking, there must be some
24 truth to the charges against the individual person?

25 You checked Yes on both of those, and I was

1 wondering what your thoughts were about those answers
2 and the presumption of innocence. How do you kind of
3 square those and work those out?

4 MR. KENNEDY: No. I don't think
5 necessarily it has any clouding on the presumption of
6 innocence. I believe all false information is
7 shadowed with truths. I believe the more truths you
8 put into the false accusation or information, the
9 more believable it becomes. So I know it's very
10 important to scrutinize details and variables in each
11 individual case, so I think...

12 THE COURT: So you think you could put
13 aside how we got here while we're having this trial,
14 and just focus on the evidence here and presume these
15 gentlemen innocent throughout the trial until you get
16 back to deliberate?

17 MR. KENNEDY: Absolutely.

18 THE COURT: Thank you, Mr. Kennedy.

19 Ms. Scifres, am I saying that correctly?

20 MS. SCIFRES: Scifres.

21 THE COURT: You're over from Roswell?
22 Thank you. What brought you from California to New
23 Mexico?

24 MS. SCIFRES: My husband was born and
25 raised in Roswell. We moved back after being in the

1 military.

2 THE COURT: My first year of law school, I
3 spent the summer there. It's a very nice town. I
4 must say, I had a little carriage house that didn't
5 have any air conditioning, and I found out how hot
6 the Pecos Valley is.

7 MS. SCIFRES: We have lots of wind.
8 Windows.

9 THE COURT: What do you do, Ms. Scifres?

10 MS. SCIFRES: I'm a shipping and receiving
11 manager for Roswell Livestock and Farm Supply.

12 THE COURT: And what did your spouse do
13 before retirement?

14 MS. SCIFRES: He was in security, and now
15 he's unemployed.

16 THE COURT: All right. And what branch did
17 he work --

18 MS. SCIFRES: Navy.

19 THE COURT: And what did he do there?

20 MS. SCIFRES: Avionics technician.

21 THE COURT: And did you say his employer --
22 what the name of the firm was?

23 MS. SCIFRES: Mine is Roswell Livestock --

24 THE COURT: Well, his.

25 MS. SCIFRES: Navy.

1 THE COURT: Oh, Navy. Okay. All right.

2 A couple of questions about your answers on
3 the special questionnaire. It says: "Do you believe
4 that it should be easier to convict a prison inmate
5 who commits a crime in prison than a person who is
6 not in prison who commits the same crime?" And you
7 said yes. What's your thinking about that being
8 easier?

9 MS. SCIFRES: I believe they're there for a
10 reason if they were convicted of whatever they were
11 convicted of.

12 THE COURT: Okay. If I were to instruct
13 you that it doesn't matter where the alleged crime
14 occurred, the burden is always going to be the same,
15 on the Government, to prove beyond a reasonable doubt
16 each and every element, would you be able to follow
17 that instruction?

18 MS. SCIFRES: I believe so, yes.

19 THE COURT: And so if I were to instruct
20 you that this case isn't going to be any easier than
21 any other case for the Government to try to get a
22 conviction, would you be able to follow that
23 instruction?

24 MS. SCIFRES: Yes.

25 THE COURT: All right. Thank you, Ms.

1 Scifres.

2 Mr. Donart, good morning again to you.
3 You're down from Rio Rancho. Thank you very much.
4 What do you do?

5 MR. DONART: I'm currently working in the
6 biosafety office and the conflict of interest office
7 at UNM. I've only been there two weeks. Before
8 that, I was in biology research.

9 THE COURT: And what is UNM HSC?

10 MR. DONART: Health Sciences Center.

11 THE COURT: Is that right on campus near
12 the hospital and the law school, in that area?

13 MR. DONART: Yeah.

14 THE COURT: And what does your spouse do?

15 MR. DONART: She is also in biology
16 research. She just traded jobs, as well. So she's
17 working for a company called Sartorius now.

18 THE COURT: And your dates of
19 unavailability, you had June 1, and we talked a
20 little bit -- that seems to be the very outside date.
21 But what do you have on that date?

22 MR. DONART: June 1 was the scheduled
23 testing date for my dental exam. Also added some
24 dates that I thought of.

25 THE COURT: The other one you had was May

1 16. And what happens then?

2 MR. DONART: Oh, May 16 is the
3 Institutional Biosafety Committee meeting, which I
4 was hired be the administrator for.

5 THE COURT: Okay. A few questions about
6 some of your answers on the questionnaire. In
7 response to, "In what ways, if at all, might your
8 religious or philosophical beliefs affect your
9 service on the jury," you said, "My religion guides
10 all my decisions." Do you see any possibility of any
11 conflict between your religious beliefs and the
12 evidence in this case as you know -- it has been
13 described over the last couple of days or my
14 instructions, do you see any problems there?

15 MR. DONART: No, sir.

16 THE COURT: And a couple of questions that
17 we've already touched on this morning. The one about
18 easier to convict if the -- convict a prison inmate
19 who commits a crime in prison than a person who is
20 not in prison who commits the same crime, and you put
21 yes. And I think you were there talking about
22 probably there's more evidence, like videos and
23 stuff.

24 MR. DONART: Yeah.

25 THE COURT: Is that what you had in mind?

1 MR. DONART: I was thinking of prison as a
2 more restricted environment, smaller population, more
3 oversight.

4 THE COURT: So you might have more evidence
5 and that's the reason it's easier?

6 MR. DONART: Right.

7 THE COURT: But would you agree that it's
8 not easier on the Government; they have the same
9 burden of proving every element beyond a reasonable
10 doubt?

11 MR. DONART: Yes, sir.

12 THE COURT: Okay. So it's not easier in
13 that sense?

14 MR. DONART: Right.

15 THE COURT: And then again, this question
16 about there must be some evidence or truth to the
17 charges against the individual person. One time you
18 checked Yes, one time you checked No. And your
19 thoughts about that and the presumption of innocence?

20 MR. DONART: I think "must" is probably a
21 bit stronger word than I was thinking, but...

22 THE COURT: You wouldn't have any problem
23 presuming these people innocent and forgetting how
24 they got here and how this trial got started?

25 MR. DONART: No, sir.

1 THE COURT: And the other question was:
2 "If, after hearing the evidence, you thought the
3 defendant could be guilty but you were not convinced
4 beyond a reasonable doubt that he is guilty, would
5 you be able to return a verdict of not guilty?" And
6 you put No there. Is that still your answer or --

7 MR. DONART: I think I misunderstood the
8 question, as well.

9 THE COURT: So if you came to the end and
10 you thought there's a chance they're guilty but the
11 Government hadn't proved it beyond a reasonable
12 doubt, you would be able to check that box and say
13 "Not guilty"?

14 MR. DONART: Yes, sir.

15 MR. SINDEL: You indicated that you might
16 have some problems, that it was possible you would
17 not be able to look at photographs and video
18 recordings. After sitting here a couple of days, do
19 you think that if you were told to look at them and
20 consider them, would you be able to do that?

21 MR. DONART: Yeah.

22 THE COURT: Tattoos. You had that -- you
23 said they're pretty common these days, didn't
24 understand why people put them on their faces, I
25 think. I don't know if we're going to see evidence

1 on faces and stuff, but if we do see tattoos on
2 faces, do you think you could be fair and impartial
3 to those people?

4 MR. DONART: Yes, sir.

5 THE COURT: All right. And you're studying
6 for the entrance exam, but that's June 1. Do I have
7 that correct?

8 MR. DONART: Yes.

9 THE COURT: Thank you, Mr. Donart.

10 MR. DONART: There's one other date that I
11 put on the slip yesterday, April 27. My old job,
12 when I transferred over, we made a deal with my new
13 boss that I could assist with a study on April 27.
14 That was the date that I put on there. They're
15 short-staffed and I was the most qualified person to
16 run the exposure system. There are other people that
17 know how to run it, but it would be difficult.

18 THE COURT: All right. Thank you, Mr.
19 Donart.

20 Let's go over here to Mr. Marquardt from
21 Roswell, as well. Thank you. What brought you from
22 Texas to New Mexico, Mr. Marquardt?

23 DR. MARQUARDT: Practice opportunity.

24 THE COURT: And what does your spouse do?

25 DR. MARQUARDT: She's an adult nurse

1 practitioner, has a cardiology practice in Roswell.

2 THE COURT: And what is her employer?

3 DR. MARQUARDT: Covenant Health Systems.

4 THE COURT: My folks use Covenant over in
5 Lubbock. I didn't know they stretched all the way to
6 Roswell.

7 DR. MARQUARDT: They do.

8 THE COURT: It's interesting, Covenant goes
9 to Lovington, but not to Hobbs. My dad got sick and
10 my mom's plan was: Throw him in the car and drive
11 him to Lovington. Well, that's not really a plan.

12 DR. MARQUARDT: It's kind of a common
13 occurrence.

14 THE COURT: Guess what? She did it.
15 Called a couple of people at church and threw him in
16 the car.

17 Your dates of unavailability, you had June
18 16th through the 24th. What's occurring on those
19 dates?

20 DR. MARQUARDT: I was planning on taking my
21 son-in-law and his father to the College World Series
22 in Nebraska.

23 THE COURT: Oh, cool. You can't get Ray
24 Birmingham to get the Lobos there? We'll be over by
25 June 1st, so are you okay to serve the next eight

1 weeks?

2 DR. MARQUARDT: Yes, sir.

3 THE COURT: A couple of your questions I
4 wanted to ask you about -- or answers. One was more
5 likely to believe law enforcement, including FBI
6 agents and prison officials, over any other witness
7 in a court of law. What's your thoughts about that?
8 Do you think that you'd be more likely to believe
9 those?

10 DR. MARQUARDT: I would listen to the
11 testimony, and I'm not going to put any more weight
12 on that than anybody else's testimony.

13 THE COURT: Do you think you could judge
14 their credibility with the same tools you would any
15 other witness?

16 DR. MARQUARDT: Yes.

17 THE COURT: On the question about: Do you
18 think your feelings involving people who sell drugs
19 or your personal experiences involving drugs might
20 influence you in a case where there are allegations
21 of distribution of drugs, you checked Yes and No on
22 that. You put Yes in considering punishment for
23 someone. One of the instructions that I'll give the
24 jurors is that they're not to consider punishment in
25 any way. If there is a conviction, that's something

1 I'll have to decide. With that understanding, do you
2 think you could be fair and impartial to everybody if
3 there's allegations of drug use and trafficking?

4 DR. MARQUARDT: Yes, sir.

5 THE COURT: And again, on this question
6 about some truth to the charges, how do you square
7 that and your answer of Yes to that with the
8 presumption of innocence?

9 DR. MARQUARDT: Presumption of innocence is
10 there.

11 THE COURT: So you'd be able to put aside
12 why we're here and how we got here and focus on the
13 evidence and presume them innocent all the way
14 through trial?

15 DR. MARQUARDT: Yes.

16 THE COURT: Thank you, Mr. Marquardt.

17 Ms. Pellegrino, what brought you from
18 Missouri to New Mexico?

19 DR. PELLEGRINO: A good job.

20 THE COURT: And what is a professional --
21 what is your professional specialty? Do you have a
22 particular one?

23 DR. PELLEGRINO: No, I didn't formally
24 specialize, but I'm a public health general dentist.

25 THE COURT: What is the Ben Archer Health

1 Center?

2 DR. PELLEGRINO: It's a federally qualified
3 health center throughout central and southern New
4 Mexico. I believe there's about 11 different
5 locations, and we help underserved populations.

6 THE COURT: Now, one of the things that you
7 wanted to bring to the Court's attention was the NHSC
8 loan repayment recipient. Tell me how that might
9 play into the fact that you might be --

10 DR. PELLEGRINO: I spoke with them and any
11 day that I am not at work I can just tack onto my
12 commitment so --

13 THE COURT: So you're okay. I assumed what
14 you're trying to tell me is, you've got these loans
15 and you're obligated to be at that facility, and it
16 might interfere with the repayment obligation. Is
17 that what you're telling me?

18 DR. PELLEGRINO: Correct.

19 THE COURT: And you talked to them and
20 you're okay?

21 DR. PELLEGRINO: Yes.

22 THE COURT: Okay. So it's not a factor if
23 you're chosen?

24 DR. PELLEGRINO: No.

25 THE COURT: You had dates of

1 unavailability. You had 5/11/18. What do you have
2 on May 11?

3 DR. PELLEGRINO: A cousin is getting
4 married.

5 THE COURT: And what day is the 11th?

6 DR. PELLEGRINO: Friday.

7 THE COURT: And where is the wedding?

8 DR. PELLEGRINO: Austin.

9 THE COURT: Other than that, you're okay to
10 serve? It's that one day?

11 DR. PELLEGRINO: Correct.

12 THE COURT: On the question about more
13 likely to believe law enforcement, what's your
14 thoughts about that? Are you going to believe those
15 law enforcement more than other witnesses, or how are
16 you going to go about --

17 DR. PELLEGRINO: Ideally, they have a code
18 of ethics that we hope that they adhere to, but we're
19 all human, so that's not always the case.

20 THE COURT: So you'd be able to look at
21 each one of them one at a time --

22 DR. PELLEGRINO: Yes.

23 THE COURT: -- and bring the same sort of
24 tools to determining credibility as you would any
25 other witness?

1 DR. PELLEGRINO: Yes.

2 THE COURT: And you answered, Do you
3 believe that a prison inmate is presumed innocent if
4 he is being prosecuted for committing a crime while
5 in prison, and you selected No there. Can you talk
6 to me about how you square that thought with the
7 presumption of innocence here?

8 DR. PELLEGRINO: I think I was probably
9 thinking the community at large would probably be
10 more assuming that they were guilty. But I realize
11 that in this sense it is assumed until personally I
12 am convinced otherwise.

13 THE COURT: And you would be able to do that?
14 You'd be able to presume any person charged by the
15 Government with the presumption of innocence?

16 DR. PELLEGRINO: Yes.

17 THE COURT: All the way through trial?

18 DR. PELLEGRINO: Yes.

19 THE COURT: And the question, "Do you
20 believe it should be easier to convict a
21 person/inmate who commits a crime in prison than a
22 person who is not in prison who commits the same
23 crime," you selected No, but then you put in your
24 answer, "Depends on the circumstances, the evidence."
25 What's your thoughts on that?

1 DR. PELLEGRINO: I think there is more
2 oversight so it should be -- a lot more evidence
3 should be easily presented via the prison system, et
4 cetera.

5 THE COURT: But you're not trying to say
6 that the burden on the Government should be easier?

7 DR. PELLEGRINO: No.

8 THE COURT: You'd hold them to --

9 DR. PELLEGRINO: The evidence still has to
10 be there.

11 THE COURT: You'd hold them to the standard
12 of beyond a reasonable doubt on every element of the
13 charges?

14 DR. PELLEGRINO: Yes, Your Honor.

15 THE COURT: Thank you, Ms. Pellegrino.

16 Ms. Trujillo, you're down from Albuquerque.
17 Thank you very much. What do you do when you're
18 employed, Ms. Trujillo?

19 MS. TRUJILLO: Currently I'm working for
20 Lovelace Hospital doing chart abstracting, and I just
21 found out yesterday that I got a job with
22 Presbyterian that they would like me to start on May
23 7.

24 THE COURT: Were we good luck to you
25 yesterday?

1 MS. TRUJILLO: It was a big day.

2 THE COURT: Big day. All right. Which
3 hospital are you currently at, or which Lovelace
4 facility?

5 MS. TRUJILLO: It's a new Lovelace off of
6 Jefferson and Osuna.

7 THE COURT: Where will you be working with
8 Pres?

9 MS. TRUJILLO: At the Rust Hospital in the
10 ER.

11 THE COURT: Okay. Thank you, Ms. Trujillo.
12 Ms. Garcia, down from Bloomfield. Thank
13 you very much. What did you do before you retired?

14 MS. GARCIA: I worked in HR.

15 THE COURT: And what does your spouse do?

16 MS. GARCIA: He worked for the same
17 company. He was an optimizer. It's an energy
18 company, and he was tasked with doing jobs for --
19 well, we always called it "Doing it better for less."

20 THE COURT: And what's the name of the
21 employer?

22 MS. GARCIA: Williams.

23 THE COURT: And that's the big energy
24 company.

25 MS. GARCIA: Yes.

1 THE COURT: The dates of unavailability you
2 put October 2018. We're certainly going to be over
3 by October 2018.

4 MS. GARCIA: Yeah.

5 THE COURT: So you're okay to serve the
6 next eight weeks?

7 MS. GARCIA: Yes.

8 THE COURT: On this question about easier
9 to convict, what's your thinking about that answer,
10 which I think you checked Yes, and this requirement
11 that the -- well, you did check No, but then you put,
12 "Innocent until proven guilty." Oh, I see what I was
13 looking at. It's: "Do you believe it should be
14 easier to convict a prison inmate," you put Yes, then
15 you wrote the word "perception." Can you tell me
16 what you were thinking about that?

17 MS. GARCIA: I think it is perception. If
18 someone is in prison, it would be easier, in common
19 thought. But in actuality, the gentlemen at this
20 table are going to have to prove to me that they are
21 not innocent.

22 THE COURT: And so you're not trying to say
23 the burden on the Government is easier in this case
24 than another case?

25 MS. GARCIA: No.

1 THE COURT: And just because they're
2 alleging that somebody was in prison when there was
3 the crime that's charged, you wouldn't make it easier
4 for the Government to try to prove it in that
5 situation?

6 MS. GARCIA: Absolutely not.

7 THE COURT: All right. I was going to talk
8 to you about your thoughts on the right to silence,
9 and your answer to that was -- this was a person
10 accused of a crime does not have to testify in his
11 defense, and his silence may not be considered as
12 evidence against him. And the question was: "How do
13 you feel about that," and you said you're not sure.
14 Do you want to talk to me about what your thoughts
15 are about the right to silence?

16 MS. GARCIA: I wasn't sure until you
17 explained it. I really wasn't sue. I didn't realize
18 that that was actually one of our freedoms, that we
19 had that ability not to say anything. You know,
20 especially when they said -- and now I'm
21 understanding that these gentlemen may be in prison,
22 or maybe this happened in prison. I didn't know all
23 this. So a lot of the questions I am answering I'm
24 answering thinking about the general public.

25 THE COURT: Okay.

1 MS. GARCIA: And I don't -- now that you've
2 explained it, I am more understanding as to what is
3 expected of me.

4 THE COURT: All right. And so my
5 instructions will be -- and I don't know what these
6 gentlemen will do, but I will instruct the jury that
7 if they don't testify, you can't use that against
8 them; and if they don't put on evidence, you can't
9 use that against them or draw any inference. You
10 would be able to follow that instruction?

11 MS. GARCIA: Yes.

12 THE COURT: All right. Photographs. You
13 indicated you might have a hard time looking at them.
14 Do you think you'd be able to assure the Court and
15 parties that whatever evidence gets introduced, you
16 would look at it?

17 MS. GARCIA: I'll look at it. I know I'm
18 going to be uncomfortable. I know that for a fact.
19 I wouldn't deny that. But yes, I will look at them.

20 THE COURT: I know that Las Cruces is a
21 long ways from Bloomfield, but if you were selected,
22 would you be able to serve?

23 MS. GARCIA: Yes.

24 THE COURT: Thank you, Ms. Garcia.

25 Mr. Kimmick, I'm going to have to ask you a

1 little bit more questions about your basic
2 questionnaire, because we didn't get the same
3 questionnaire from you that we got from others. So
4 if you'll bear with me. You're over from Silver
5 City. Thank you very much. I guess the first
6 question is: How long have you resided at your
7 current address?

8 MR. KIMMICK: Oh, it's actually at my
9 parents' guest house, so pretty much 27 years.

10 THE COURT: Are you renting it, or do you
11 own it, or just living there?

12 MR. KIMMICK: I'm doing refurbishments on
13 it, so that's how I'm paying rent right now until I
14 get ready to buy a house.

15 THE COURT: How long have you resided in
16 New Mexico?

17 MR. KIMMICK: All my life, save for about a
18 year.

19 THE COURT: Now, were you born in Silver
20 City?

21 MR. KIMMICK: Yes.

22 THE COURT: So you're not naturalized or
23 anything like that?

24 MR. KIMMICK: No, I'm a natural.

25 THE COURT: And your marital status?

1 MR. KIMMICK: I'm single, but that's
2 probably going to be changing here before too long.

3 THE COURT: And what does your fiance do?

4 MR. KIMMICK: She just got through working
5 for a health care provider within detention centers.

6 THE COURT: And what's the name of her
7 employer?

8 MR. KIMMICK: Well, she recently resigned,
9 so it was Health Care Partners, and they typically
10 service county detention centers. There are several
11 of them here in New Mexico and Colorado, and she just
12 got through with an assignment up in Sterling,
13 Colorado.

14 THE COURT: And your occupation. Are
15 you -- I used to represent Phelps Dodge, which I
16 don't think exists anymore, but is that --

17 MR. KIMMICK: I work for their successors.

18 THE COURT: I was just in Phoenix on
19 Friday. It's McMoRan --

20 MR. KIMMICK: Freeport-McMoRan.

21 THE COURT: Did they change the name of the
22 building in Phoenix from Phelps Dodge?

23 MR. KIMMICK: Literally every single thing
24 that said Phelps Dodge has been erased from their
25 memories, except for the Bisbee Deportation, is the

1 only thing they still talk about.

2 THE COURT: All right. And let's see. All
3 right. You read, write, and speak English?

4 MR. KIMMICK: Last I checked.

5 THE COURT: What was your highest education
6 level?

7 MR. KIMMICK: I have an associate's in
8 general studies from New Mexico State University.

9 THE COURT: Were you ever convicted of a
10 state or federal crime punishable by imprisonment for
11 more than one year?

12 MR. KIMMICK: No, sir.

13 THE COURT: Are there any charges pending
14 against you?

15 MR. KIMMICK: Not that I'm aware of.

16 THE COURT: Have you ever been represented
17 by an attorney or law firm?

18 MR. KIMMICK: Yes.

19 THE COURT: Have you ever been a party to a
20 lawsuit?

21 MR. KIMMICK: Yes.

22 THE COURT: And those are related?

23 MR. KIMMICK: No, the attorney represented
24 me for a family legal matter with the settling of my
25 late grandmother's estate, and I'm a part of a class

1 action lawsuit against Wells Fargo right now.

2 THE COURT: And are you a member of any
3 fraternal, civic, labor, or other organization?

4 MR. KIMMICK: I'm a member of the Loyal
5 Order of Moose.

6 THE COURT: And do you have any hearing
7 impairments?

8 MR. KIMMICK: What? No, sir.

9 THE COURT: When you get this job, the
10 first thing they do is send you to an ear doctor,
11 and --

12 MR. KIMMICK: Mine, too.

13 THE COURT: -- and so everybody -- when I
14 said I had to go get it checked, everybody said,
15 "Well, you know, you haven't been listening." I go,
16 "What's this?" And my wife said, "Yeah, you haven't
17 been hearing."

18 So when I got to the doctor, the doctor
19 said, "What are you here for?"

20 And I explained I was about to get this
21 job, and he said, "Well, your hearing is okay."

22 So then the doctor came in and he said,
23 "What are you here for?" And I explained. And I
24 said, My wife, though, has been saying I'm not
25 hearing everything."

1 He said, "How long have you been married?"

2 MR. KIMMICK: Selective hearing.

3 THE COURT: He said, "Well, your hearing is
4 just fine."

5 Are there any additional matters touching
6 upon your ability to serve as a juror that should be
7 brought to the attention of the Court?

8 MR. KIMMICK: I don't think so.

9 THE COURT: And what about your dates of
10 unavailability? Do you have anything specific?

11 MR. KIMMICK: No, not specific. It would
12 just be helpful if the Court would tell my employer
13 to not force me to go work on, like, Sunday on night
14 shift, because they will, and that means I'd get off
15 at 5:00 in the morning and then have to drive down
16 here and sit through jury duty all day. But their
17 policies are written that during my scheduled shifts
18 if we're actually in court, they'll pay and all that,
19 but if we're not in court and I'm not subject to
20 being called in to court, then I need to cover my
21 shifts.

22 THE COURT: All right. We'll see, if
23 you're selected, if we can help on that score.

24 MR. KIMMICK: Okay.

25 THE COURT: One question I wanted to ask on

1 the special questionnaire, is this: "Do you think if
2 a person is brought to trial there must be some truth
3 to the charges?" And you put Yes or No. What's your
4 thinking about that, and how do you square that with
5 the --

6 MR. KIMMICK: Well, if they go through a
7 grand jury process, there is generally something
8 there that is going to cause reasonable people to
9 raise an inquiry. It doesn't mean that there is any
10 guilt or innocence to it. It's just that there is a
11 reasonable inquiry that is made by the grand jury,
12 and another jury needs to go through and actually
13 study it in-depth. So there might be truth there.
14 There might not, you know. It could be where there's
15 smoke, there's fire; and it could just be that the
16 ashes are smoldering and it just blew on somebody
17 else.

18 THE COURT: But you could put aside how we
19 got here?

20 MR. KIMMICK: Absolutely.

21 THE COURT: And just presume these
22 gentlemen to be innocent for the entire trial?

23 MR. KIMMICK: Absolutely.

24 THE COURT: All right. Thank you, Mr.
25 Kimmick.

1 Mr. Carrillo, you're over from Silver City,
2 too. Thank you very much. What do you do?

3 MR. CARRILLO: I work for Freeport, too.

4 THE COURT: And y'all don't know each
5 other?

6 MR. CARRILLO: No.

7 THE COURT: Okay. What -- you work with
8 the pumps. What do you use pumps for in mining?

9 MR. CARRILLO: I take care of all the
10 environmental wells around the four mines in Silver.

11 THE COURT: I'm more familiar with how you
12 use water in the oil field from my time there. What
13 do you use water for --

14 MR. CARRILLO: The bad water doesn't get
15 into the good water. We have to get, like, the city
16 and then pump of water to them, too, and stuff.

17 THE COURT: My brother-in-law lives in
18 Placitas, and he's a hard rock mining engineer. He
19 flies all over the world. So I know a little bit
20 about mining.

21 MR. CARRILLO: We have 1,000 wells to take
22 care of.

23 THE COURT: What does your spouse do?

24 MR. CARRILLO: She works at Cobre High
25 School in the day care, taking care of the infant

1 babies for the girls that are going to school.

2 THE COURT: Your answer to the question on
3 being easier to convict, do you believe they're in
4 prison -- do you believe it should be easier to
5 convict a prison inmate who commits a crime in
6 prison? You put Yes. What's your thinking on that?

7 MR. CARRILLO: My thinking was just that
8 people outside would convict them easier than anybody
9 else.

10 THE COURT: Because of evidence or --

11 MR. CARRILLO: Because of the situation and
12 stuff.

13 THE COURT: Do you agree that it shouldn't
14 be easier on the Government to prove somebody in that
15 position guilty; the same burden applies?

16 MR. CARRILLO: No.

17 THE COURT: You don't think the same burden
18 applies or you do?

19 MR. CARRILLO: Oh, yes. Yes.

20 THE COURT: So you would hold the
21 Government to having to prove --

22 MR. CARRILLO: They would have to prove
23 them guilty.

24 THE COURT: -- in this case just like any
25 other case --

1 MR. CARRILLO: Yes.

2 THE COURT: -- they'd have to prove beyond
3 a reasonable doubt, you could do that?

4 MR. CARRILLO: Yes, sir.

5 THE COURT: All right. And the question
6 about there must be some truth to the charges against
7 the individual person who is brought to trial --
8 what's your thoughts about that and the presumption
9 of innocence?

10 MR. CARRILLO: I would just have to see
11 what was, I guess --

12 THE COURT: What the evidence is going to
13 be?

14 MR. CARRILLO: Yeah, the evidence is going
15 to be.

16 THE COURT: Could you presume -- not worry
17 about how we got here and just presume these
18 gentlemen to be innocent throughout trial until you
19 get back there and deliberate?

20 MR. CARRILLO: Yes, sir.

21 THE COURT: All right. Thank you, Mr.
22 Carrillo.

23 MR. CARRILLO: I had one --

24 THE COURT: You may.

25 MR. CARRILLO: On the days to be here, my

1 mother is getting operated on the 14th.

2 THE COURT: On the 14th. All right. Thank
3 you, Mr. Carrillo.

4 Mr. Meyer, you're down from Albuquerque?

5 MR. MEYER: Yes, sir.

6 THE COURT: What did your spouse do before
7 your spouse passed away?

8 MR. MEYER: Before she passed away, she was
9 a special ed. director for a charter school.

10 THE COURT: And what was her employer? Was
11 it APS?

12 MR. MEYER: It was Rio Gallinas, in Las
13 Vegas, New Mexico.

14 THE COURT: What did you do before
15 retiring?

16 MR. MEYER: I was -- my last position -- I
17 retired from the state government. My last position
18 was manager of New Mexico Human Services Department
19 in Las Vegas, New Mexico.

20 THE COURT: And what agency is that
21 connected with?

22 MR. MEYER: New Mexico Human Services.

23 THE COURT: What was your major field of
24 study in college?

25 MR. MEYER: I have a BA in mass

1 communication.

2 THE COURT: And you put dates of
3 unavailability, you put all dates. Does that mean --

4 MR. MEYER: I meant the opposite.

5 THE COURT: You meant the opposite. So
6 you're available all dates. Try to keep it that way.
7 So you're available for the next eight weeks?

8 MR. MEYER: Yes, I meant the opposite.

9 THE COURT: Thank you, Mr. Meyer.

10 Ms. Velazquez, you're down from Santa Fe.
11 Thank you. What -- how long have you resided at your
12 current address?

13 MS. VELAZQUEZ: Can I go speak to you?

14 THE COURT: Certainly. While you're doing
15 that, I'm going to talk to Mr. Saiz over right next
16 to you there.

17 You're over from Flora Vista. Thank you
18 very much. Where exactly is that? I think this
19 shows up on my questionnaires, and I always have to
20 ask. Do you want to remind me?

21 MR. SAIZ: It's in between Aztec and
22 Farmington.

23 THE COURT: All right. And what do you do?

24 MR. SAIZ: I'm actually in Artesia now.

25 THE COURT: Oh, you are?

1 MR. SAIZ: I'm a service land man for Devon
2 Energy.

3 THE COURT: I used to do some oil and gas
4 production and worked with Devon. They seem like a
5 good group of people to work with. Do you agree?

6 MR. SAIZ: Yes, sir.

7 THE COURT: On your questionnaire, you had
8 "more likely to believe law enforcement." What's
9 your thinking about the answer on that question?

10 MR. SAIZ: I think it has to do with their
11 testimony, the way they act, the way they speak, and
12 probably the questions they're asked.

13 THE COURT: All right. And do you believe
14 that if there were evidence shown that they weren't
15 remembering correctly, or that they were not being
16 truthful, do you think you'd be able to treat them
17 like any other witness?

18 MR. SAIZ: Yes.

19 THE COURT: All right. And then on the
20 question about, "Do you think your feelings involving
21 people who sell or use drugs might influence you in
22 this case," you checked Yes, that you had no sympathy
23 for anyone who has anything to do with drug activity.
24 In this case, there may be some evidence that people
25 are involved in drug trafficking. Do you think you

1 could still be fair and impartial? You've got strong
2 views there, but do you think you could be fair and
3 impartial to people that there may be evidence that
4 they engaged in drug trafficking use?

5 MR. SAIZ: I believe so.

6 THE COURT: And then on the right to
7 silence, that question says, A person who is accused
8 of a crime doesn't have to testify, and you said, "I
9 think they should be questioned in front of the
10 jury." What's your thoughts about that, and how you
11 square that with the right to silence?

12 MR. SAIZ: I think your explanation has
13 probably changed my mind on that. I guess I didn't
14 realize that they didn't have to testify.

15 THE COURT: So if I instruct you not to
16 draw any inference if they decide not to testify or
17 put on witnesses, you'd be able to follow that and
18 not draw any adverse inferences or use it against
19 them in any way?

20 MR. SAIZ: That's correct.

21 THE COURT: All right. I know that jury
22 service can interfere with work, and I really do.
23 But if you were selected, do you think you'd be able
24 to serve?

25 MR. SAIZ: I believe so.

1 THE COURT: All right. Thank you, Mr.
2 Saiz.

3 Let me get one more over in that corner,
4 and then we'll come to Ms. Velazquez.

5 Ms. Nelson, you're over from Alamogordo.
6 Thank you very much. What do you do?

7 MS. NELSON: I'm a budget analyst for the
8 U.S. Air Force.

9 THE COURT: Are you in the Air Force, or a
10 civilian employee?

11 MS. NELSON: I'm a civilian.

12 THE COURT: What does a resource advisor
13 do?

14 MS. NELSON: Right now, like, we're
15 handling the F-16 fed down budget, and so all the
16 budget process from purchasing, contracts.

17 THE COURT: And what was your major field
18 of study in college?

19 MS. NELSON: Electronics.

20 THE COURT: What did your spouse do before
21 the divorce?

22 MS. NELSON: He was in -- worked for the
23 sheriff's department, Alamogordo Police Department,
24 for about a year.

25 THE COURT: And you put on that you would

1 be more likely to believe law enforcement. What's
2 your thinking about that in relation to other
3 witnesses and how you determine credibility?

4 MS. NELSON: I think I could be impartial.

5 THE COURT: So you wouldn't necessarily
6 believe somebody just because they were law
7 enforcement?

8 MS. NELSON: Yes.

9 THE COURT: And you could bring the same
10 tools you use to determine credibility, like demeanor
11 and what they say, and cross-examination, those
12 things, bring them to -- use them the same way to
13 determine credibility with law enforcement as you
14 could any other witness?

15 MS. NELSON: Yes, sir.

16 THE COURT: Thank you, Ms. Nelson.

17 All right. Why don't we come up here,
18 Ms. Velasquez.

19 (The following proceedings were held at the
20 bench.)

21 THE COURT: All right. How are you doing
22 this morning, Ms. Velazquez?

23 MS. VELAZQUEZ: I'm good.

24 THE COURT: You're down from Santa Fe.

25 Thank you. What did you want to speak to us about or

1 want me to ask you questions here at the bench?

2 MS. VELAZQUEZ: Sorry, I didn't speak
3 yesterday, but I am having a hard time understanding
4 most of this. I'm still learning English. Where I
5 work in Santa Fe, it's the animal shelter, and
6 there's a lot of people that are helping me there.
7 So yeah, I'm just -- I'm really having a hard time.
8 I thought I could do it, but I don't think I can.

9 THE COURT: Well, just take a deep breath;
10 all right?

11 MS. VELAZQUEZ: No, I'm sorry.

12 THE COURT: We're all friendly here. None
13 of us are going to eat you alive or anything. So
14 you're doing quite well. I knew it from the
15 questionnaire that you feel a little self-conscious
16 about your English. This isn't a patent case, it's
17 not an intellectual property case, so we're not going
18 to be using some of the biggest words that lawyers
19 use, and we're going to try to explain everything we
20 do. And I wanted to have you just kind of sit there
21 for a day or so, so that you could kind of get a feel
22 for us and what this case is about, and how we talk.
23 And I also wanted to give you an opportunity to speak
24 a little bit in court and get comfortable with
25 speaking in court.

1 If you're selected as a juror, you're not
2 going to have to speak in court. This is probably as
3 bad as it gets, as far as you having to talk; and
4 we're talking up here at the bench, so you don't have
5 to be in front of anybody.

6 My impression has been that your English is
7 really quite good; you're doing very well. And I've
8 had people talking to you that have told me that
9 you're doing okay. What's your thinking about it?
10 Tell me what you're thinking about your English.
11 Because my impression is, you're doing just fine.

12 MS. VELAZQUEZ: Just -- I don't think I
13 can.

14 THE COURT: Okay. Let's do this a little
15 bit. Let me ask you some questions, and you answer
16 those, and then I'm going to let some of the lawyers
17 ask you some questions up here, as well.

18 How long have you resided at your current
19 address?

20 MS. VELAZQUEZ: In Santa Fe, six, seven
21 months.

22 THE COURT: Okay can you talk to me a
23 little bit about your work at a veterinarian clinic?

24 MS. VELAZQUEZ: Um-hum.

25 THE COURT: What do you do there?

1 MS. VELAZQUEZ: I clean, I help a lot with,
2 you know, pets, cats and dogs.

3 THE COURT: Get a little closer to the
4 microphone here so that the court reporter can pick
5 it up.

6 When you received this questionnaire,
7 unlike a lot of people that wrote back answers on
8 this, I could read your writing. Did you write out
9 all this?

10 MS. VELAZQUEZ: I used Google.

11 THE COURT: To do what?

12 MS. VELAZQUEZ: I used the Google
13 Translate.

14 THE COURT: Okay. But this is your
15 handwriting?

16 MS. VELAZQUEZ: Um-hum.

17 THE COURT: You've got beautiful
18 handwriting, and I can read it. Some of the others I
19 put on my glasses and I still couldn't read it. But
20 nobody helped you fill out this questionnaire? You
21 did it yourself?

22 MS. VELAZQUEZ: Most of it. My boyfriend
23 helped me a little bit.

24 THE COURT: All right. But most of these
25 are your answers?

1 MS. VELAZQUEZ: Um-hum.

2 THE COURT: Okay. Let me ask you about a
3 couple of questions that are here. One of the
4 questions -- and you may remember having filled this
5 out -- it said, "Do you believe that a prison inmate
6 is presumed innocent if he is being prosecuted for
7 committing a crime while in prison?"

8 And you didn't answer Yes or No, but you
9 wrote in as an answer, you said, "It depends on the
10 situation. People may just be defending themselves."

11 What were you thinking about that answer
12 and that question when you made it?

13 MS. VELAZQUEZ: Um, um, um, can you repeat
14 the question?

15 THE COURT: Yeah. The question was: "Do
16 you believe that a prison inmate is presumed innocent
17 if he is prosecuted for committing a crime while in
18 prison?" And you didn't answer Yes or No, but you
19 did write -- you wrote out, "Depends on the
20 situation. People may just be defending themselves."

21 What were you thinking when you wrote that
22 out?

23 MS. VELAZQUEZ: Um, I think, um, um, in
24 jail they can fight. So I mean, maybe, just, um, the
25 picture.

1 THE COURT: Do you understand the English
2 word "presumption"?

3 MS. VELAZQUEZ: No.

4 THE COURT: All right. When you look at
5 these men sitting over at this table, do you think
6 they're guilty or not guilty?

7 MS. VELAZQUEZ: Um, not guilty.

8 THE COURT: Okay. And could you throughout
9 this trial keep that thought that they're not guilty
10 until you go back at the end of the trial and
11 deliberate?

12 MS. VELAZQUEZ: Um, I think so.

13 THE COURT: And could you require the
14 Government here, the prosecutors -- could you require
15 them to prove these gentlemen guilty beyond a
16 reasonable doubt if they can do that?

17 MS. VELAZQUEZ: Can you repeat that again?

18 THE COURT: Yeah. Could you require the
19 Government over here, the people sitting over at this
20 table -- could you require them to prove each element
21 of the crime beyond a reasonable doubt?

22 MS. VELAZQUEZ: Um-hum.

23 THE COURT: Let me see if there is anything
24 else I wanted to ask you. You talked a little bit
25 about drugs, that drugs might influence you in this

1 case if there was evidence of drug distribution.

2 There may be evidence of that in this case of drug
3 distribution. Do you think you could still be fair
4 and impartial to people if there is evidence that
5 they're distributing drugs?

6 MS. VELAZQUEZ: Um. I don't know.

7 THE COURT: You don't know?

8 MS. VELAZQUEZ: Drugs have ruined a lot of
9 my family. I just --

10 THE COURT: Now, we heard a lot of people
11 talking yesterday about it ruined their family and
12 some lives and things like that. And you don't have
13 to change your view about how you feel about drugs.

14 MS. VELAZQUEZ: Um-hum.

15 THE COURT: But if you have -- if you hear
16 evidence that some of the people in this room
17 distributed drugs, could you still be fair and
18 impartial to them about the charges here? Because
19 the charges are, as I summarized yesterday, more
20 about murder and assault and those things. Do you
21 think you could still be fair to them?

22 MS. VELAZQUEZ: I don't know.

23 THE COURT: You don't know?

24 MS. VELAZQUEZ: No.

25 THE COURT: Let me ask you about how they

1 got there. You had answered some of the questions
2 about there must be some truth to the charges. Do
3 you think you could put aside how we got here and
4 things like this and just concentrate on the evidence
5 in this courtroom and not worry about how we got
6 there?

7 MS. VELAZQUEZ: Could you say that again?

8 THE COURT: You said there might be some
9 truth to the charges if somebody is being brought to
10 trial and here we are at trial. Could you put aside
11 how we got here and just focus on the evidence that
12 you're going to hear here and not speculate about how
13 we got here?

14 MS. VELAZQUEZ: Um, I think so.

15 THE COURT: Okay. You've heard me probably
16 talking about the right to silence, that these men
17 don't have to put on any evidence or have to testify.
18 If they decided not to do that, would you be able not
19 to hold that against them or think, well, they may be
20 guilty because they're not testifying? Would you be
21 able to not do that?

22 MS. VELAZQUEZ: Like, me, I didn't speak at
23 the beginning, so I mean, I -- I feel like if they
24 don't speak, it might be because they, you know -- I
25 think they did something.

1 THE COURT: And in the United States, under
2 the Constitution that we have here, you've got to put
3 those sort of thoughts aside. And if I told you you
4 had to put those thoughts aside, would you be able to
5 follow my instructions, or would you always have in
6 the back of your mind that they must not be -- they
7 must have something to hide, because they're not
8 testifying?

9 MS. VELAZQUEZ: Um, I think if they don't
10 speak, it must be for a reason.

11 THE COURT: Say that again?

12 MS. VELAZQUEZ: I think if they don't
13 speak, it must be for a reason.

14 THE COURT: And even if I told you
15 otherwise, you couldn't follow my instruction?

16 MS. VELAZQUEZ: I don't think so.

17 THE COURT: Okay. We talked a little bit
18 about the photographs and things like that. Would
19 you be able to look at the photographs?

20 MS. VELAZQUEZ: I think so.

21 THE COURT: Okay. And do you think that
22 listening -- or listening to maybe some evidence or
23 videos or photographs, you'd still be able to be fair
24 and impartial to these folks?

25 MS. VELAZQUEZ: I think so.

1 THE COURT: You had talked a little bit
2 about some family members that I think were coming
3 home that had been in a hospital or something like
4 that. Where does that stand?

5 MS. VELAZQUEZ: What was that, again?

6 THE COURT: I thought you had said that
7 there were some family members that had been in a
8 hospital or something, and they had just come home.
9 Let's see. "Family member is really sick. Was sent
10 home."

11 What was that referring to?

12 MS. VELAZQUEZ: My Uncle Paul. They sent
13 him home just to die.

14 THE COURT: Okay.

15 MS. VELAZQUEZ: He has cancer and he lives
16 in Albuquerque.

17 THE COURT: Right.

18 MS. VELAZQUEZ: I do go visit a lot.

19 THE COURT: Your uncle doesn't live with
20 you?

21 MS. VELAZQUEZ: Hum-um.

22 THE COURT: He lives independently?

23 MS. VELAZQUEZ: Um-hum.

24 THE COURT: And you live in Santa Fe, and
25 when you talked about appointments, that was with

1 your job; correct?

2 MS. VELAZQUEZ: Um-hum.

3 MR. SINDEL: Now, you told me you didn't
4 have a vehicle. How did you get here yesterday or
5 Sunday?

6 MS. VELAZQUEZ: My boyfriend, and he's not
7 going to work, because he's here with me.

8 THE COURT: He's still here with you?

9 MS. VELAZQUEZ: Um-hum.

10 THE COURT: And if you were selected to
11 serve, would you stay -- would he stay with you and
12 drive you back and forth on the weekend and things?
13 Is that what the plan would be?

14 MS. VELAZQUEZ: I don't know, because he
15 works on the weekends. So I don't know.

16 THE COURT: All right.

17 MS. VELAZQUEZ: We haven't planned
18 anything.

19 THE COURT: All right.

20 Mr. Beck, do you have questions of
21 Ms. Velasquez?

22 MR. BECK: Ms. Velazquez, thank you for
23 coming here. And it's obvious that you put work into
24 your questionnaire and into answering the questions
25 here, so we appreciate that.

1 How much of what the judge just asked you
2 would you say you understood? All of it, most of it,
3 some of it?

4 MS. VELAZQUEZ: Some of it. Some questions
5 I kind of remember. Yesterday, just when they talked
6 too fast, it's hard for me.

7 MR. BECK: Sure. I understand. What about
8 when I read off the names of the witnesses? Were you
9 able to follow along with my reading?

10 MS. VELAZQUEZ: Not all of them. I don't
11 remember.

12 MR. BECK: And how well do you read the
13 English language?

14 MS. VELAZQUEZ: There's a lot of words that
15 I still don't understand.

16 MR. BECK: Okay.

17 MS. VELAZQUEZ: I usually have my phone.

18 MR. BECK: Sure. And it sounds like that's
19 how you filled out the questionnaire that you filled
20 out, is that you wrote in, I'm guessing, the Spanish
21 language to the translator, and then you translated
22 it into English with Google, and then wrote that
23 translation onto the form; is that right?

24 MS. VELAZQUEZ: Yeah, and my boyfriend --
25 because Google sometimes makes things difficult, so

1 my boyfriend helped me how to write it better.

2 MR. BECK: Okay. If during this trial
3 there was evidence, say, recordings of fast-paced
4 conversations in English, would that cause you
5 concern that you would have to listen to the --
6 decide on the matter here?

7 MS. VELAZQUEZ: Um-hum.

8 MR. BECK: Is that a yes?

9 MS. VELAZQUEZ: Um-hum.

10 MR. BECK: I just need you to answer yes or
11 no.

12 MS. VELAZQUEZ: Yeah. Even at work, I have
13 to ask to repeat a lot.

14 MR. BECK: And as I said, I think it shows
15 a lot of your character to try to work hard here and
16 to try to understand. But oftentimes there's just
17 cases or situations where maybe you're not the right
18 juror to sit on this case.

19 MS. VELAZQUEZ: Um-hum.

20 MR. BECK: And given what you've heard here
21 in this first day and some of the difficulties you've
22 had understanding the language, do you think that
23 maybe you're not the right juror to sit on this
24 panel?

25 MS. VELAZQUEZ: No.

1 MR. BECK: Thank you for sharing. I don't
2 have any more questions.

3 THE COURT: Mr. Sindel, do you want to come
4 on this side?

5 MR. SINDEL: I was just wondering if maybe
6 we could talk over here, have her step aside and we
7 could talk.

8 THE COURT: Why don't you step over here?

9 MR. SINDEL: I think I got a visual from
10 Ms. Armijo; perhaps we can have an agreement to
11 strike this particular person. I don't want to
12 question her unnecessarily. I will. But if we get
13 an agreement that is sufficient for the Court, I
14 think there's obviously concerns, and Mr. Beck has
15 been adequately able to point out some of those
16 concerns, and whether or not she's really going to be
17 able to. There's going to be scientific evidence as
18 well as the phone conversations. Some of these
19 people can talk pretty quickly. And if she's trying
20 to translate in her head, she's going to be thinking
21 about the past thought rather than the present
22 testimony.

23 THE COURT: All right. Is that where all
24 the defendants are?

25 MR. COOPER: And there's also the hardship

1 issue.

2 THE COURT: All right. I'll put her back
3 over, back in the seat, and then maybe at the break
4 I'll have Ms. Wild or Ms. Bevel go ahead and excuse
5 her then.

6 MR. BECK: And the United States agrees.

7 THE COURT: I should have asked that.

8 MS. HARBOUR-VALDEZ: Thank you.

9 MR. COOPER: Mr. Castle asked me to remind
10 the Court to --

11 THE COURT: Oh, yeah.

12 MR. COOPER: -- inform them that we may be
13 stepping out.

14 THE COURT: Okay. I will do that.

15 MS. HARBOUR-VALDEZ: Reread the list.

16 MR. BECK: The thing -- the judge is going
17 to have me reread the list.

18 (A discussion was held off the record.)

19 THE COURT: I understand that y'all may
20 have agreed to release the group 3 jurors entirely.

21 MS. HARBOUR-VALDEZ: Yes.

22 MR. COOPER: Yes.

23 THE COURT: You guys must be optimistic. I
24 like that.

25 MR. SINDEL: Pessimism, Your Honor.

1 THE COURT: I'm always trying to keep a few
2 in my back pocket for disasters.

3 MR. COOPER: We're going to be fine, Judge.

4 MR. BECK: We are.

5 THE COURT: So if everybody is in
6 agreement, we'll let the group 3 go.

7 MS. HARBOUR-VALDEZ: Thank you.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. You may see from
11 time to time attorneys stepping out of the courtroom
12 for things. They're not going out to smoke. They
13 can't smoke in a federal building anyway, but they're
14 going out there doing business, because they're going
15 to begin this trial, and so if you see that
16 occurring, don't hold it against anybody. They've
17 got permission of the Court to step out and get ready
18 for the trial.

19 All right, Mr. Johnson, I'm going to come
20 over to you.

21 You're down from Roswell. Thank you very
22 much. What do you do?

23 MR. JOHNSON: I am a master's level social
24 worker at the New Mexico Rehab Center in Roswell, New
25 Mexico. I'm on the medical side. My primary duty is

1 discharge planning, writing reports, doing
2 assessments, some counseling.

3 THE COURT: All right. And what is the
4 rehab center? Is it all kinds of drugs, alcohol --
5 what is it?

6 MR. JOHNSON: We do medical rehab, which
7 I'm involved in. We serve people with knee
8 replacements, hip replacements, stroke, TBIs. And
9 then also, on the other side of our building,
10 chemical dependency.

11 THE COURT: Okay.

12 MR. JOHNSON: It's a short-term facility.
13 I really don't have a lot to do with that side.

14 THE COURT: And your hearing, so far,
15 you've been okay in the courtroom?

16 MR. JOHNSON: Yes, as long as I have this
17 handy little device.

18 THE COURT: People have those, but the
19 acoustics work for you?

20 MR. JOHNSON: Yes.

21 THE COURT: If we talk in a microphone,
22 you're doing okay?

23 MR. JOHNSON: Yes.

24 THE COURT: What did your spouse do before
25 passing away?

1 MR. JOHNSON: She was a teacher, awarded
2 teacher. She was one of those type of teachers
3 that -- her students really loved her.

4 THE COURT: And her employer?

5 MR. JOHNSON: The Roswell Independent
6 School District.

7 THE COURT: And what grade or subject did
8 she teach?

9 MR. JOHNSON: She taught fifth grade for, I
10 think, about 10 or 15 -- about 10 years. And in her
11 last year she had transferred to the middle school at
12 Mesa Middle School in Roswell.

13 THE COURT: What was her subject in middle
14 school?

15 MR. JOHNSON: I think mostly social studies
16 and things like that.

17 THE COURT: We talked a little bit about
18 this question about believing law enforcement more
19 than other witnesses, and I think you had checked Yes
20 on that. What's your thoughts about that?

21 MR. JOHNSON: I think on the street that I
22 would believe an officer before maybe other people.
23 But here in the courtroom I'd be willing to listen,
24 and depending on the answer, you know, I think I'd be
25 able to make a good judgment, you know, on both sides

1 of the court.

2 THE COURT: You'd treat them like any other
3 witness here in court?

4 MR. JOHNSON: Yes.

5 THE COURT: And you put -- "Do you think if
6 a person is brought to trial, there must be some
7 truth to the charges?" And that was asked a couple
8 of times in a couple of ways, and you put, Yes. Kind
9 of how do you square those with the presumption of
10 innocence?

11 MR. JOHNSON: The reason I put those is
12 that in dealing with my wife's trial, I know if you
13 get this far in a court proceeding, there must be --
14 for these folks over here to bring this, they must
15 have some pretty good evidence.

16 However, you know, I'm able to listen to
17 it. I don't know any of these guys or any of the
18 people that are coming to trial. So my thought would
19 be they're innocent. I'm thinking everybody is going
20 to do a good job and we're going to get the
21 information, and then, if I was selected, to
22 deliberate fairly.

23 THE COURT: So could you not worry about
24 how we got there and those things and just presume
25 them innocent?

1 MR. JOHNSON: Yeah. Yeah, I think so.

2 THE COURT: You're not going to sit here
3 and think, because they're sitting here, they're more
4 likely guilty than not?

5 MR. JOHNSON: I would just say, you know,
6 show me. I'm up to listening to the evidence.

7 THE COURT: Okay. And you'd require the
8 Government to prove their case against these
9 gentlemen beyond a reasonable doubt?

10 MR. JOHNSON: Yes, I have respect for the
11 law. That's what you're telling me; that's what I'm
12 going to do.

13 THE COURT: One question you put, If after
14 hearing the evidence you thought the defendant could
15 be guilty but you were not convinced beyond a
16 reasonable doubt that he is guilty, would you be able
17 to return a verdict of not guilty? And you put No.

18 If you thought at the end of the case that
19 there is a chance they were guilty but you didn't
20 think the Government had proved it beyond a
21 reasonable doubt, would you be able to check that box
22 of not guilty?

23 MR. JOHNSON: I think I really didn't
24 understand, like a lot of folks here, what that
25 really meant. I might not like that, but if I feel

1 that the other jurors felt the same, I could, you
2 know, go with a not guilty.

3 THE COURT: All right. So you would hold
4 the Government to the burden of proving these
5 gentlemen guilty beyond a reasonable doubt?

6 MR. JOHNSON: Again, I don't like that law,
7 but if you tell me that's what I've got to do, that's
8 what I've got to do, I'll listen to that and abide by
9 the law.

10 THE COURT: What is it that you don't like
11 about that standard of beyond a reasonable doubt?

12 MR. JOHNSON: I think sometimes somebody
13 might be guilty. I mean, just because it may not be
14 clearly presented, you know, that doesn't necessarily
15 mean that they're innocent. I mean, it depends on
16 how folks present and how the Court sometimes is, for
17 lack of a better word, manipulated, you know, to
18 prove a case. Just because they're not able to give
19 clear evidence doesn't mean that -- but again, I
20 would be able to abide by the law.

21 THE COURT: Okay. We talked a little bit
22 about the right to silence, and I think you wrote you
23 don't like that either. But your thoughts on that
24 after thinking about it maybe a couple of days?

25 MR. JOHNSON: Yeah, I think, again, I may

1 not like that, but that's the law. As a social
2 worker I work with a lot of issues that I don't
3 particularly like and maybe people that I don't
4 particularly like, but I'm there to serve them
5 because that's my duty, and to help them and try to
6 help them find a better path.

7 THE COURT: All right. And if these
8 gentlemen decide not to testify or put on any
9 evidence, you wouldn't hold that against them or draw
10 any adverse inference from it?

11 MR. JOHNSON: That is correct.

12 THE COURT: All right. If we take breaks
13 like we did yesterday every hour and a half,
14 healthwise you'd be okay to serve?

15 MR. JOHNSON: I think so. I've had cancer,
16 prostate cancer, and I have some incontinence
17 problems. So just as long as I don't drink a lot of
18 coffee and water, I'm okay. The last couple of days
19 I've been all right.

20 THE COURT: And I know it can be difficult
21 to be away from your job for this length of time, but
22 if you were selected, you'd be okay to serve?

23 MR. JOHNSON: Well, I'm the only licensed
24 social worker on my side of the building. We do have
25 a couple of others. It would be a real burden on

1 them, and some of the things at home, but if you call
2 me to serve, I talked with my boss this morning, I
3 think I could do it.

4 THE COURT: All right. Thank you, Mr.
5 Johnson.

6 MR. JOHNSON: You're welcome.

7 THE COURT: Ms. Large, you're down from
8 Albuquerque. Thank you. What do you do?

9 MS. LARGE: Currently I work at the Rape
10 Crisis Center in New Mexico, and also a student and
11 doing my social work internship at the Public
12 Defender's Office in Albuquerque.

13 THE COURT: What does an advocate do?

14 MS. LARGE: So I basically work on the rape
15 crisis hotline. I assist in sexual assaults with the
16 SANE nurse examiners. I support survivors with
17 whatever resources they need. Just basically a
18 support and advocate for victims of sexual assault.

19 THE COURT: And how many years of college
20 have you had?

21 MS. LARGE: I'm actually graduating with my
22 BSW in May and starting graduate school in the fall.

23 THE COURT: What is your major field?

24 MS. LARGE: Social work.

25 THE COURT: Are you a member of any

1 fraternal, civic, labor or other organization?

2 MS. LARGE: No, sir.

3 THE COURT: Let's talk about your being a
4 student. Where are you a student?

5 MS. LARGE: I'm a student at NMHU, the
6 Albuquerque campus.

7 THE COURT: That's Highlands?

8 MS. LARGE: Yes.

9 THE COURT: What level -- you're done with
10 your undergraduate, you're about to go into your
11 master's?

12 MS. LARGE: I'm going to be graduating with
13 my BSW in May and then I'll start my MSW in the fall.

14 THE COURT: And can you spell out what
15 those are?

16 MS. LARGE: Master's of social work.
17 Master of social work.

18 THE COURT: What is your career goal?

19 MS. LARGE: I really don't -- I'm not
20 really sure where I'm going to be, what my passion
21 is. Definitely to serve underneeded populations, so
22 I'm not really sure where I'm going to go. But I'm
23 open to pretty much anything.

24 THE COURT: All right. You live in
25 Albuquerque. You've got this going on. If you were

1 selected to serve, would you be able to serve?

2 MS. LARGE: I would have to do some
3 rearranging, but yeah, I can make it happen.

4 THE COURT: Thank you, Ms. Large. I
5 appreciate it.

6 Mr. DeVargas, when you say Los Ranchos,
7 you're talking about Albuquerque?

8 MR. DeVARGAS: Yes, North Valley in
9 Albuquerque, yes, sir.

10 THE COURT: And what do you do,
11 Mr. DeVargas?

12 MR. DeVARGAS: I work for Bank of America.
13 I am a manager of 20 bank tellers who assist
14 customers through virtual assistance. So if you go
15 to an ATM, you speak to one of my tellers through
16 video chat.

17 THE COURT: Well, Wells Fargo doesn't do
18 that.

19 MR. DeVARGAS: Technology has come a long
20 way, absolutely.

21 THE COURT: I'm not sure I want to speak to
22 an ATM.

23 MR. DeVARGAS: It's pretty cool. If you
24 come and cash a check, you could get hundreds,
25 twenties, fives, ones, and change. When is the last

1 time you got change at an ATM?

2 THE COURT: I don't know. I know I'm
3 probably the last person that still buys stamps. I
4 went to my Wells Fargo, and they don't give stamps
5 anymore. Do you give stamps at your ATM?

6 MR. DeVARGAS: No, but as part of my
7 career, we try to help people save money and I think
8 saving them money on stamps is one of the ways we do
9 that. So it's something that's going out of
10 business.

11 THE COURT: I was doing a bank fraud case
12 and the Assistant U.S. Attorney was talking about
13 there are still old people that still mail stuff, and
14 Ms. Wild put up on her screen -- she sometimes sends
15 me messages -- "He thinks you're an old guy."

16 Do you work out of one of the branches?

17 MR. DeVARGAS: My office is in Rio Rancho
18 on the corner of 550 and 528.

19 THE COURT: What does your spouse do?

20 MR. DeVARGAS: She works there, as well.
21 It's kind of a customer service contact service
22 center, so we aren't necessarily a big branch.

23 THE COURT: This question that some people
24 have said that they didn't quite understand it -- it
25 said, If, after hearing the evidence, you thought the

1 defendant could be guilty but you were not convinced
2 beyond a reasonable doubt that he is guilty, would
3 you be able to return a verdict of not guilty? And
4 you checked No. Is that still your thinking or
5 what's your thoughts?

6 MR. DeVARGAS: My understanding is better
7 now. Yesterday and today have been very enlightening
8 of beyond a reasonable doubt, and I think that I
9 could certainly see that beyond a reasonable doubt.

10 THE COURT: All right. So you'd hold the
11 Government to that standard, and if they didn't prove
12 it, you'd be able to check that "Not guilty" box?

13 MR. DeVARGAS: Absolutely.

14 THE COURT: You live in Albuquerque.

15 MR. DeVARGAS: Yes, sir.

16 THE COURT: You're like me, a three-hour
17 drive?

18 MR. DeVARGAS: Yes.

19 THE COURT: If you are selected, would you
20 be able to serve?

21 MR. DeVARGAS: My leadership would not be
22 very excited to have to do what I do every day, but I
23 think we can manage, yes, sir.

24 THE COURT: Thank you, Mr. DeVargas. I
25 appreciate it.

1 Mr. Krohn, you're down from Sandia Park.
2 Thank you. What do you do?

3 MR. KROHN: I'm a technical consultant.
4 That's a generic phrase. I'm actually a computer
5 programmer for ProLaw Software. It's a software
6 branch of a big huge conglomerate called Thomson
7 Reuters.

8 THE COURT: I associate them with the news
9 services. Am I wrong? Do they do some things like
10 Bloomberg News?

11 MR. KROHN: The company has been expanding
12 and acquiring new things, and at some point they
13 decided they needed a wire service, so they bought
14 Reuters.

15 THE COURT: That must be the portion.

16 MR. KROHN: I work with the software that's
17 used by law firms and the Department of Justice and
18 places like that to manage their offices and their
19 court calendars.

20 THE COURT: What does your spouse do?

21 MR. KROHN: She's a writer. She's
22 currently writing a series of murder mysteries set in
23 Santa Fe.

24 THE COURT: Any particular time period?

25 MR. KROHN: Contemporary.

1 THE COURT: I can't read my writing.

2 MR. KROHN: I can't read my writing.

3 THE COURT: I know what I was going to say.
4 I know that there is some job interference, and there
5 is distance between Santa Fe and Albuquerque. Do you
6 think, with your job and distance, if you were
7 selected you'd be able to serve?

8 MR. KROHN: If I was called, I could serve.
9 There would be a minor inconvenience personally.
10 We've got a vacation two weeks from now booked, paid
11 for, tour tickets that can't be redeemed. The
12 greater burden would be on my employer, because of
13 the deliverable I mentioned yesterday that my company
14 has been working on for a year, and the delivery date
15 is literally right now. So right now, my managers
16 are waiting to find out what happens here to decide
17 whether to try to reschedule, or take the financial
18 hit for being in breach of contract for failing to
19 deliver over the next two weeks.

20 THE COURT: You had put dates of
21 unavailability as April 2 through 17. That's what
22 you're talking about right now?

23 MR. KROHN: Right, yeah, that's the work
24 conflict.

25 THE COURT: All right. What is the Society

1 for Creative Anachronism?

2 MR. KROHN: I had forgotten I wrote that
3 down. In my teens, I was a member of a club. It's a
4 nonprofit recreational club dedicated to the research
5 and recreation of things medieval, jousting
6 tournaments, things like that. You know, it was an
7 interesting way to learn about medieval history, and
8 it was a lot of fun.

9 THE COURT: So when I go by the parks in
10 Albuquerque and see the knights and banners, that's
11 it?

12 MR. KROHN: Yeah. If they're swinging
13 boffers, then it's an unrelated organization. If
14 they're swinging great big sticks that look more like
15 actual swords, that's SCA.

16 THE COURT: What is a local herald?

17 MR. KROHN: The herald is like a person who
18 is in charge of a few different things, including
19 things like holding court. Rather than the king
20 deigning to make pronouncements to the populace, the
21 herald would read proclamations and things like that.
22 They're also in charge of registering coats of arms
23 for the knights to paint on their shields.

24 THE COURT: Let me ask you about a couple
25 of questions that you hadn't answered yet on your

1 questionnaire. "Do you think if a person is brought
2 to trial, there must be some truth to the charges?"
3 And you put Yes. Do you want to talk to me about
4 that answer and the presumption of innocence that we
5 talked about the last couple of days?

6 MR. KROHN: Well, a grand jury has found
7 probable cause to bring it to trial. There is the
8 old bromide that a grand jury would be willing to
9 indict a ham sandwich. So I know that the burden of
10 proof is not nearly as high and that there's not any
11 opportunity for a defense to be mounted before a
12 grand jury. So that's what we would be here for
13 today, would be to give a defendant his day in court
14 and for the State to put forward a more rigorous
15 presentation of evidence.

16 THE COURT: And you think you could put
17 aside how we got here and why these gentlemen are
18 here and presume them innocent until you go back to
19 deliberate?

20 MR. KROHN: Absolutely. Everybody on that
21 side of the bar, both sides of the room, are just
22 fellow citizens of New Mexico.

23 THE COURT: The photographs and videos that
24 you may see in this trial -- would you be able to
25 look at them and consider them as evidence?

1 MR. KROHN: I could look at still photos.
2 No problem. If the Government is bringing video
3 evidence, that would be more difficult. If anybody
4 happened to be manipulating bodies in the video, I
5 would not be able to look at that.

6 THE COURT: I don't know the evidence well
7 enough to comment on that. Maybe the lawyers can
8 address that with you. You think, right at the
9 moment, you would be able to look and consider the
10 evidence that's going to come into the case?

11 MR. KROHN: Except for that one very thin
12 slice, yeah, I would be able to look at it. If
13 they've got videotape of bodies being moved,
14 manipulated, I wouldn't be able to look at that.
15 I've tried in the past, so I know I wouldn't be able
16 to. I had to get up and leave the room.

17 THE COURT: After you look at these
18 pictures, assume it's not that category --

19 MR. KROHN: Yeah.

20 THE COURT: -- do you think could be fair
21 and impartial to the parties, look at it, consider
22 it, be fair and impartial to the parties?

23 MR. KROHN: Yes, Your Honor.

24 THE COURT: Tattoos. There may be some
25 evidence in the case of tattoos, and you said that --

1 we asked you what thoughts you had about it, and you
2 said, "If they don't exhort criminal activity, then
3 they're fine." Do you want to talk to me about what
4 you were trying to communicate with that thought?

5 MR. KROHN: I have lots of friends who have
6 tattoos, varying levels of artistry. I have no
7 problems with them, but they don't have tattoos of
8 Nazi symbols, they don't have tattoos of violent
9 activities, things like that. So if I were to see
10 some of those, I would have to assume that the wearer
11 was trying to convey a violent message like that, and
12 I would have to say, "Message received."

13 THE COURT: Okay. You know, I think you'll
14 agree with me, it's not a crime to have a tattoo;
15 right?

16 MR. KROHN: Absolutely not.

17 THE COURT: So certainly it may -- usually
18 tattoos are trying to express something, because
19 that's what people generally do with putting tattoos.
20 After you look at them and you consider them for what
21 everybody is trying to convey with them, do you think
22 you could still remain fair and impartial to the
23 parties here and just use it as any other evidence in
24 the case?

25 MR. KROHN: Yes, Your Honor.

1 THE COURT: Okay. I know the distance and
2 job. You and I have talked a little bit about that.
3 But you think if you were asked to serve, you would
4 be able to do it, Mr. Krohn?

5 MR. KROHN: Yes, your Honor.

6 THE COURT: Thank you very much, Mr. Krohn.

7 All right. I think that we had better give
8 Ms. Bean a break, so we're going to take a break this
9 morning. This is our first morning break. So I'm
10 going to remind you of a few things that are
11 especially important.

12 Again, until the trial is completed -- and
13 we're long ways from that -- you're not to discuss
14 this case with anyone, whether it's members of your
15 family, people involved in the trial, or anyone else,
16 and that includes your fellow jurors. If anyone
17 approaches and tries to discuss the trial with you,
18 let me know immediately.

19 Also, you must not read or listen to any
20 news reports of the trial. Don't get on the internet
21 and do any research for purposes of this case.

22 And finally, remember that you must not
23 talk about anything with any person who is involved
24 in the trial, even if it doesn't have anything to do
25 with the trial.

1 If you need to speak with me, give a note
2 to one of the court security officers or Ms. Wild or
3 Ms. Bevel. I may not be repeating these at the lunch
4 break and things, but do keep them in mind each time
5 we take a break.

6 All right. We'll be in recess for about 15
7 minutes, then I'm about to wrap up, and then the
8 lawyers may have some questions. So stay outside of
9 the courtroom until Ms. Wild or Ms. Bevel comes and
10 gets you. Take your belongings with you, because you
11 will need to come back in and take the seat and place
12 that you've been sitting all day.

13 (The venire panel left the courtroom.)

14 THE COURT: All right, we'll be in recess
15 for about 15 minutes.

16 (The Court stood in recess.)

17 THE COURT: All right. I think we've got
18 all the attorneys. Got all the defendants. If you
19 can sit down so Ms. Wild can take a look down at that
20 end and make sure everything is okay.

21 All right. Feel good about it? Mr. Beck?

22 MR. BECK: The only thing I was going to
23 say, Your Honor, we had the comment from the juror
24 yesterday that he wasn't paying attention to the
25 Government's witness list because he didn't know he

1 should.

2 THE COURT: I'm going to finish this. I'm
3 going to do some wrap-up to see if they've got
4 anything else to say, then I'll come back to it. If
5 I don't do it, stand up. That's where I'm planning
6 to do it. Does that work for you?

7 MR. BECK: Yes, sir. Thank you.

8 THE COURT: Remember to stay seated.

9 Everything look okay at that end, Ms. Wild?
10 Everything look okay?

11 All right. Remember to stay seated. Sorry
12 this is taking some time. I hope I'm doing some good
13 here. I know it's a little slow, but maybe this will
14 be helpful.

15 (The venire panel entered the courtroom.)

16 THE COURT: If you'll come back in and take
17 your seats where you've been seated the last couple
18 of days, we'll try to get started. Thank you for
19 your patience, cooperation, all you're doing for us.

20 All right. I appreciate everybody getting
21 in and out and back here, and I appreciate the way
22 you're working with the Court, with the parties. I
23 appreciate that very much.

24 Mr. Bunnell, we'll start with you. You're
25 down here from Tijeras. Thank you very much.

1 What brought you from -- I think I wrote --
2 Kansas to New Mexico?

3 MR. BUNNEL: It's where the Air Force left
4 me, sir.

5 THE COURT: And what's the name of your
6 employer?

7 MR. BUNNEL: I work for Agilities.

8 THE COURT: What is that group?

9 MR. BUNNEL: It's an engineering and
10 support contract for the Air Force.

11 THE COURT: Has your spouse ever worked
12 outside of the home?

13 MR. BUNNEL: Yes, sir. When I was
14 stationed in Florida, she worked for a scholarship
15 foundation.

16 THE COURT: What was the name of it?

17 MR. BUNNEL: It was the Astronaut
18 Scholarship Foundation, STEM scholarships for
19 undergraduates.

20 THE COURT: Thank you, Mr. Bunnell.

21 Mr. Moore, you're over from Alamogordo.
22 Thank you. What brought you from Ohio to New Mexico?

23 MR. MOORE: Oh, well, that's where my
24 family is from. But I moved around quite a bit since
25 then. Arizona, Massachusetts, Georgia, New Mexico.

1 THE COURT: And what do you do? Are you in
2 the military?

3 MR. MOORE: I'm a civilian working for the
4 Air Force, yes.

5 THE COURT: And what do you do in your --

6 MR. MOORE: I'm a photographer.

7 THE COURT: Okay. And your spouse. What
8 does your spouse do?

9 MR. MOORE: She is a child care provider
10 for the Air Force.

11 THE COURT: For the Air Force. And so her
12 employer -- she's another civilian employee of the
13 Air Force?

14 MR. MOORE: Yes, she's what they call a NAF
15 employee.

16 THE COURT: You had mentioned in your
17 questionnaire about police officers, that you would
18 be more likely to believe law enforcement. What's
19 your thoughts about that in comparison to how you
20 evaluate credibility with other witnesses in this
21 case?

22 MR. MOORE: Well, I think it's an
23 idealistic perspective. I would like to think they'd
24 be more honest than the average person, but I
25 understand that they're human like the rest of us.

1 THE COURT: So you just test their
2 credibility the same way you would the other
3 witnesses?

4 MR. MOORE: Yes, sir.

5 THE COURT: So you're mostly saying you
6 hope law enforcement would be truthful and accurate?

7 MR. MOORE: Yes, sir.

8 THE COURT: All right. On the drugs, I
9 wanted to ask you if -- on the question, "Do you
10 think your feelings involving people who sell drugs
11 might influence you in this case," and you said,
12 "Yes, there may be some evidence of drug use and drug
13 trafficking in this case."

14 It's not primarily a drug case, although
15 there may be evidence of it. We've talked about it
16 being more of a murder and assault and those sort of
17 things case. If you heard that evidence about drug
18 use and drug trafficking, do you think you could
19 still be fair and impartial to the parties as you
20 look at the charges of murder and assault and those
21 things?

22 MR. MOORE: Yes, sir. I think I responded
23 that way just because I've had that abuse in my
24 family and it obviously affected the family.

25 THE COURT: But for purposes of this case,

1 do you think you could be fair and impartial to all
2 the parties here?

3 MR. MOORE: Yes, sir.

4 THE COURT: Thank you, Mr. Moore.

5 All right, Mr. Hinson, you're from
6 Mountainair. What brought you from Michigan to New
7 Mexico?

8 MR. HINSON: Principally I was tired of
9 shoveling my driveway four months out of the year.

10 THE COURT: You indicated you were an Uber
11 driver. Now, are you an Uber driver in Mountainair?

12 MR. HINSON: No, I go up to Albuquerque.

13 THE COURT: Up to Albuquerque. What does
14 your spouse do?

15 MR. HINSON: We're both self-employed. We
16 own a skin care business, Skin-beautiful.com.

17 THE COURT: And you've been represented by
18 an attorney in the past. What was that in connection
19 with?

20 MR. HINSON: That was when I was caught
21 with Ecstasy and cocaine.

22 THE COURT: All right. Your ability to
23 look at photographs, videos in this case, would you
24 be able to do that?

25 MR. HINSON: Yes.

1 THE COURT: All right. And I know that
2 particularly with the work that you have, jury duty
3 can impose a financial hardship, but if you were
4 selected, would you be able to serve?

5 MR. HINSON: I would still have to go to
6 the hotel and work four hours a night.

7 THE COURT: All right. Thank you,
8 Mr. Hinson. I appreciate it. I'm probably going to
9 be joining you at the hotel working every night. We
10 work on the stuff up in Albuquerque and probably
11 these lawyers will be, too.

12 All right. We'll go over here to
13 Mr. Yancey. You're down from Albuquerque, with me.
14 What do you do?

15 MR. YANCEY: Officially I'm a data center
16 technician. Unofficially, I'm, "Hey, we need this."

17 THE COURT: What is BigByte?

18 MR. YANCEY: BigByte is a data center
19 facility in which we house other people's
20 infrastructures in our secure class 3 data security
21 vault.

22 THE COURT: Your major field of study in
23 college was what?

24 MR. YANCEY: Computer information systems.

25 THE COURT: And what is an ISSP

1 certification?

2 MR. YANCEY: That would be a CISSP,
3 certified information systems security professional.

4 THE COURT: I was going to ask you a
5 question about one of your answers on the
6 questionnaire. And the question was: "Do you
7 believe it should be easier to commit a prison inmate
8 who commits a crime in prison?" You put, "Yes, more
9 evidence."

10 If I understand what you were trying to
11 communicate, there may be more evidence in a prison
12 setting than elsewhere, and that's why it would be
13 easier? Is that close to what you were trying to
14 communicate?

15 MR. YANCEY: In a controlled environment
16 you would have access to more resources such as guard
17 testimony, security cameras, I suppose, whatever
18 other control aspects are implemented in the facility
19 at the time.

20 THE COURT: So you were not saying that it
21 should be easier on the Government to prove their
22 case in that situation than in other situations?

23 MR. YANCEY: That is correct.

24 THE COURT: And so you would hold the
25 Government to the same burden of proof of beyond a

1 reasonable doubt as in any other case?

2 MR. YANCEY: That is correct.

3 THE COURT: You don't have a car; is that
4 correct?

5 MR. YANCEY: Yes.

6 THE COURT: And how did you get here?

7 MR. YANCEY: A mutual acquaintance, I
8 believe, Jason Laubscher. I believe that name rings
9 that bell with you. I'm not entirely sure. He gave
10 me a ride here.

11 THE COURT: And how would you plan to get
12 back and forth from Albuquerque if you were chosen?

13 MR. YANCEY: I have no idea.

14 THE COURT: All right. Thank you,
15 Mr. Yancey.

16 Mr. Spencer, you're from Alamogordo. Thank
17 you.

18 MR. SPENCER: Yes.

19 THE COURT: What brought you from
20 California to New Mexico?

21 MR. SPENCER: A long way around. I lived
22 in Alaska and Wyoming and just traveling jobs.

23 THE COURT: And what's a model maker?

24 MR. SPENCER: I create advanced weapons for
25 the Department of Defense. That's about as far as I

1 can --

2 THE COURT: You can tell me.

3 MR. SPENCER: Yeah.

4 THE COURT: What does your spouse do?

5 MR. SPENCER: She's a resident assistant at
6 the New Mexico School for the Blind.

7 THE COURT: All right. And her employer is
8 the State of New Mexico?

9 MR. SPENCER: Yes, sir.

10 THE COURT: All right. You had listed some
11 dates of unavailability. Looked like they were July.
12 We're going to be done by then. Would you be okay to
13 serve the next eight weeks?

14 MR. SPENCER: Yes, sir.

15 THE COURT: Let's talk about a couple of --
16 well, a little bit more than that. Questions on your
17 questionnaire. One is this one that's easier to
18 convict. What were your thoughts when you put -- let
19 me refresh my memory. You did put, Yes, that it
20 should be easier to convict a prison inmate who
21 commits a crime in prison. You put Yes. What was
22 your thinking?

23 MR. SPENCER: Based on surveillance,
24 increased surveillance.

25 THE COURT: So it's more that there might

1 be more evidence or something like that?

2 MR. SPENCER: Yes.

3 THE COURT: You wouldn't lower the burden
4 for the Government in any way?

5 MR. SPENCER: No, sir.

6 THE COURT: They'd still have to prove
7 every element beyond a reasonable doubt?

8 MR. SPENCER: Yes.

9 THE COURT: These questions about there
10 must be some truth to the charges because we're at
11 trial; they're more likely guilty. I think on all
12 those you had put Yes. What's your thinking about
13 those answers and then the presumption of innocence?

14 MR. SPENCER: Your Honor, I have the
15 deepest respect for the judicial process, so I think
16 my thinking on those answers were in relation to if
17 you had enough evidence to go to trial.

18 THE COURT: And you think you could put
19 aside any thoughts or thinking about how we got here
20 and just presume these gentlemen to be innocent
21 throughout until deliberations?

22 MR. SPENCER: Yes, sir.

23 THE COURT: All right. And you think that
24 you would hold the Government to the burden of beyond
25 a reasonable doubt for every element?

1 MR. SPENCER: Yes.

2 THE COURT: Let's talk a second about the
3 question on right to silence, and you said they have
4 something to hide if they do that -- I'm not sure
5 quite what that word is, "if they do --"

6 MR. SPENCER: My writing is atrocious.

7 THE COURT: Well, it's not atrocious, but I
8 did have trouble with that one word. "Do that to
9 commit to their own defense." What were you trying
10 to communicate?

11 MR. SPENCER: I don't really understand,
12 because I do understand the Fifth Amendment. So I
13 don't know what -- really what my thoughts were
14 there.

15 THE COURT: All right. Let's talk about
16 maybe your thoughts today. Do you think you could
17 keep from holding anything against these gentlemen if
18 they decide not to testify?

19 MR. SPENCER: Absolutely.

20 THE COURT: And you wouldn't infer anything
21 adverse to them if they didn't?

22 MR. SPENCER: No, no.

23 THE COURT: And you heard me talking about
24 that's a very cherished right in our society.

25 MR. SPENCER: Yes.

1 THE COURT: And you think you could also
2 cherish it and keep honoring it throughout the trial?

3 MR. SPENCER: Yes, sir.

4 THE COURT: Photographs, videos. We talked
5 a little bit about that. You'd said you might have a
6 problem looking at it. Do you think you could commit
7 to looking at and considering the evidence?

8 MR. SPENCER: Yes, sir.

9 THE COURT: You have this vacation in July.
10 We think we're going to be done by June 1st. Do you
11 think you're okay to serve the next eight weeks if
12 you're selected?

13 MR. SPENCER: Yes.

14 THE COURT: Thank you so much, Mr. Spencer.

15 Mr. Maestas. You're down from Albuquerque
16 too. Do you do other things beside being a plumber
17 at Roto-Rooter? I know on the radio you all solve
18 all sorts of problems. Do you solve all problems, or
19 are you just in the plumbing side?

20 MR. MAESTAS: Most of the problems, yes. I
21 don't do drains.

22 THE COURT: You don't do drains. I'm not
23 very good at them.

24 You've been represented by an attorney in
25 the past. What was that in connection with?

1 MR. MAESTAS: DWI.

2 THE COURT: Okay. On the presumption of
3 innocence, we talked about these answers to these
4 questions. The question was, "Do you believe that a
5 prison inmate is presumed innocent if he is being
6 prosecuted for committing a crime while in prison,"
7 and you checked the word No. After sitting there for
8 a couple of days, is that still your answer?

9 MR. MAESTAS: Yes.

10 THE COURT: So if somebody were
11 committing -- alleged to have committed a crime while
12 they were a prison inmate, you would not be able to
13 presume them to be innocent?

14 MR. MAESTAS: I would have to look over
15 everything. I would give them a fair chance.

16 THE COURT: Okay. Do you think that in
17 this case -- we'll just put anything aside, because
18 you and I both don't know a lot of the evidence that
19 we're about to hear -- let's just talk about these
20 men here. Can you presume them innocent throughout
21 the trial until you get back to that jury room to
22 deliberate?

23 MR. MAESTAS: Yes, sir.

24 THE COURT: All right. And so you're not
25 going to assume, just because they're here, that

1 there is some evidence or they're guilty or more
2 likely guilty? You can put all that aside?

3 MR. MAESTAS: I'll put that aside.

4 THE COURT: Okay. And you had said easier
5 to convict. You thought it might be easier to
6 convict a prison inmate who commits a crime in
7 prison, and you had put, "They're already in
8 custody." What were you thinking when you wrote that
9 sentence out?

10 MR. MAESTAS: I was thinking maybe in
11 custody for the same issues, same arrests, I guess.
12 But after hearing everything, it can go either way.

13 THE COURT: All right. You and I don't
14 know what the evidence is going to be, but at least
15 in this case, you're not going to make the burden
16 easier. Depending upon the evidence, you're going to
17 still require the Government to meet their normal
18 burden of proving every element of the alleged crime
19 beyond a reasonable doubt.

20 MR. MAESTAS: Yes.

21 THE COURT: And you can do that?
22 You just had a baby. Baby doing okay?

23 MR. MAESTAS: Doing fine.

24 THE COURT: If you were asked to serve,
25 would you be able to serve over the next eight weeks?

1 MR. MAESTAS: It would be hard to be away,
2 but we do have family that helps with that.

3 THE COURT: And you live in Albuquerque,
4 okay on transportation, all that sort of thing, to
5 get down here?

6 MR. MAESTAS: Yes.

7 THE COURT: Thank you, Mr. Maestas.
8 Appreciate it.

9 Ms. McKee, you're over from Lovington.
10 Thank you. What do you do?

11 MS. McKEE: I am a maintenance technician
12 for the County of Lea.

13 THE COURT: And your spouse's employer?

14 MS. McKEE: Pilot, Flying J.

15 THE COURT: Oh, okay. What is -- oh,
16 something I was going to ask, but you've been
17 represented by an attorney in the past. What was
18 that in connection with?

19 MS. McKEE: I have not been represented.
20 My husband was.

21 THE COURT: You're right. You just didn't
22 answer that question so the answer is No; right?

23 MS. McKEE: Yes.

24 THE COURT: You got two school-age
25 children?

1 MS. McKEE: Um-hum.

2 THE COURT: And the father here works at
3 nights?

4 MS. McKEE: Their father works nights.

5 THE COURT: So if you were asked to serve,
6 tell me how you'd balance that?

7 MS. McKEE: My mother and my mother-in-law
8 are both willing to help out with that.

9 THE COURT: You had indicated on your
10 questionnaire, "More likely to believe police
11 officers or law enforcement." What's your thinking
12 about as we have law enforcement here? Are you going
13 to always believe them, test them like any other
14 witness? How are you going to go about that task?

15 MS. McKEE: I can look at it. I can't
16 think of the word now.

17 THE COURT: You can look at their demeanor
18 and cross-examination and things and test their
19 credibility the same way as anyone else?

20 MS. McKEE: Yes.

21 THE COURT: I know that jury service
22 interferes with business. From a business
23 standpoint, do you think you can balance it and
24 serve?

25 MS. McKEE: Yeah. I'll probably lose my

1 place in the project we're working on now, but it is
2 what it is.

3 THE COURT: And the two children -- the
4 grandmothers helping and stuff, okay to serve?

5 MS. McKEE: Yes.

6 THE COURT: All right. Thank you,
7 Ms. McKee.

8 Ms. Campbell, down from Chimayo. Thank
9 you. What do you do?

10 MS. CAMPBELL: I'm a licensed clinical
11 therapist.

12 THE COURT: And what is an LCSW?

13 MS. CAMPBELL: Licensed clinical --

14 THE COURT: Just what you told me. Okay.
15 Who is your employer?

16 MS. CAMPBELL: Las Clinicas del Norte, and
17 I work at a school-based clinic in Pojoaque.

18 THE COURT: You indicated you had some
19 strong feelings about drugs that might affect the
20 case. You said you weren't sure how it would. Tell
21 me what your thinking was when you answered it, or
22 when your thinking is today about that issue.

23 MS. CAMPBELL: I live in a county with a
24 lot of heroin addiction, and people in my family and
25 in my community and the patients that I serve deal

1 with that on a daily basis. So it's all around me.

2 THE COURT: Sure. There may be some
3 evidence here of use of drugs and drug trafficking.
4 Do you think you could still be fair to all the
5 parties here, be fair and impartial to everybody?

6 MS. CAMPBELL: As a social worker, I
7 operate under, you know, ethical principles, so it's
8 the work that I do. It's just not easy all the time.

9 THE COURT: Sure. Well, being a juror is
10 not easy, either. We're asking a lot. But do you
11 think you could be fair and impartial even though you
12 have strong feelings about drugs?

13 MS. CAMPBELL: Yes.

14 THE COURT: Thank you, Ms. Campbell.

15 Ms. Wild, do you want to hand me that one
16 on Ms. Vasquez?

17 Ms. Vazquez, you're over from Clovis.
18 Ms. Wild grew up in Clovis. Do you know any Barnes
19 over there? That was her maiden name.

20 MS. VAZQUEZ: No, I'm originally from
21 Arizona.

22 THE COURT: What do you do?

23 MS. VAZQUEZ: I am a licensed clinical
24 social worker at the Hartley House Domestic Violence
25 Shelter, and I work for CYFD.

1 THE COURT: When you talk about that house,
2 what is the name of it?

3 MS. VAZQUEZ: The Hartley House.

4 THE COURT: Hartley House. Okay. That's
5 the Hartley family that was there for many years that
6 it's named after?

7 MS. VAZQUEZ: Yes.

8 THE COURT: What does it do?

9 MS. VAZQUEZ: So I provide counseling to
10 survivors of domestic violence, their children, and
11 also individuals who have been convicted of domestic
12 violence.

13 THE COURT: And you've been represented by
14 an attorney. Was that in connection with this
15 landlord/tenant dispute that you listed in your
16 questionnaire?

17 MS. VAZQUEZ: Yes, and then also for a DUI
18 that was dismissed.

19 THE COURT: Okay. All right. Let's talk
20 about your answer to some of the questions that were
21 asked of you on the special questionnaire, if I can
22 get these pages to not stick together here.

23 The question was: "Do you believe that a
24 prison inmate is presumed innocent if he is being
25 prosecuted for committing a crime while in prison?"

1 And you did some crossing out. It looked
2 to me in the end you put Yes and No. What were you
3 thinking?

4 MS. VAZQUEZ: I misunderstood the question
5 at first. It's a No.

6 THE COURT: It's a No?

7 MS. VAZQUEZ: I think what an individual
8 has been convicted of and doing time for doesn't
9 matter for what's in front of me right now. So the
10 evidence and the facts have to prove that they are no
11 longer innocent for that crime.

12 THE COURT: All right. Let me ask some
13 questions about that. Are you saying that we
14 shouldn't give people the presumption of innocence if
15 they're already in prison?

16 MS. VAZQUEZ: No, what I'm saying is they
17 are innocent for the crimes that are in front of --

18 THE COURT: Any new crimes. Is that what
19 you're trying to say?

20 MS. VAZQUEZ: Yes.

21 THE COURT: All right. Another question
22 that you have, and at least in this case -- we're
23 talking kind of a theoretical case there, but in this
24 case you could presume all these gentlemen to be
25 innocent throughout the trial?

1 MS. VAZQUEZ: Yes.

2 THE COURT: This was this cluster of
3 questions about, "Do you think if a person is brought
4 to trial, there might be some truth to the charges?"
5 You didn't answer yes or no, and said, "Can't say for
6 sure," and then when that question was kind of
7 re-asked about there might be some truth you said,
8 "Not sure."

9 Now, when you were asked if they are likely
10 to be guilty, you put No both times. What was your
11 thinking about those questions and answers?

12 MS. VAZQUEZ: So my thought is, my thinking
13 in that question was -- I mean, it takes time and
14 money to come to do a trial. There has to be
15 something that you're bringing to the table that --
16 to bring charges against somebody. That was my
17 thinking.

18 THE COURT: Okay. Can you put aside any
19 thoughts about how we got here, and why these men are
20 sitting here, and presume them innocent and just
21 listen to the evidence in this case?

22 MS. VAZQUEZ: Yes.

23 THE COURT: And on the right to silence,
24 you indicated -- you said, "I agree with that, just
25 because --"

1 MS. VAZQUEZ: You probably won't be able to
2 read it.

3 THE COURT: "Doesn't want to testify on
4 their behalf does not make them automatically
5 guilty." I paused a little bit on that word
6 "automatically." Would you agree with me that you
7 can't draw any inference, automatic or otherwise,
8 about guilt just from a decision not to testify?

9 MS. VAZQUEZ: That's basically what I was
10 saying. Just because they don't testify, it doesn't
11 mean one way or the other.

12 THE COURT: On the photographs and videos,
13 you said -- I think you checked that you wouldn't
14 have any problem. No, you put Yes on both those
15 questions, and then you said, "I believe I can. But
16 not sure till I see things like that."

17 And as you can probably guess, we can't
18 wait till that moment. We've got to push it up
19 today. Do you think you'd be able to look at the
20 evidence?

21 MS. VAZQUEZ: Yes.

22 THE COURT: You'd be able to consider it?

23 MS. VAZQUEZ: Yes.

24 THE COURT: And then after you look at it,
25 can you put it down, any emotions, and just be fair

1 and impartial to the parties even after you look at
2 it and consider it?

3 MS. VAZQUEZ: I think I could, yes.

4 THE COURT: Okay. I know that trial can be
5 difficult as far as costs and things. I think at
6 least the transportation cost, you're reimbursed for
7 that. Do you understand that?

8 MS. VAZQUEZ: Yes.

9 THE COURT: Put you in a hotel. It's not a
10 lot of money that we give. The \$1.3 trillion budget
11 that just got passed a week ago had a little increase
12 for jurors, but it's still pretty small. Do you
13 think financially and things, you could work it out?

14 MS. VAZQUEZ: I think. My work is working
15 with me on it, so I think it could be done.

16 THE COURT: And familywise, you'd be able
17 to adjust things to serve?

18 MS. VAZQUEZ: My husband works night. I
19 have teenagers. So as long as I have someone check
20 on them at night or stay with them at night, I feel
21 okay with being here.

22 THE COURT: Your teenagers aren't going to
23 be like my boys? When I was leaving town one time to
24 go up to Denver for a volleyball tournament, I told
25 my oldest son, "No parties here. Don't bring anybody

1 here."

2 And I got to about Bernalillo and realized
3 I had left something, and came back to the house, and
4 he was marking off certain rooms with police tape. I
5 decided that we didn't need two parents in Denver
6 after that. So are your children a little better?

7 MS. VAZQUEZ: They'll probably try to play
8 video games all night. I've got to have somebody
9 there. Or we've got to take, like, the computer
10 monitors out of the room and with us. That's what we
11 have to do.

12 THE COURT: I can loan you some police
13 tape. Thank you, Ms. Vasquez. I appreciate it.

14 Let me ask a very open-ended question,
15 because you and I have -- y'all have been great about
16 answering all my questions. But having heard the
17 questions that the Court has put to you, and you've
18 been sitting there getting close to a day and a half,
19 does any other reason suggest itself to you as to why
20 you could not sit on this jury and render a fair
21 verdict based upon the evidence that's going to be
22 presented to you and in the context of the Court's
23 instructions to you on the law? Is there anything
24 that's going to keep you from being fair and
25 impartial in this case, just listening to the

1 evidence, just listening to my instructions, that we
2 haven't already talked about?

3 All right. What we're going to do right
4 now, we're going to repeat something. And it may
5 have been because I didn't tell you why we were about
6 to do it, and now I'm going to tell you why we're
7 going to do it again.

8 When we listed out all those names, both
9 the Government and the defendants, about witnesses, I
10 think I probably should have made it clear to be sure
11 and listen real carefully to these lists to see if
12 anybody knows anybody on them. So your ears and eyes
13 may have glazed over a little bit as this list was
14 done. So I'm going to have the Government, Mr. Beck,
15 repeat that so that you can listen to it one more
16 time and make sure that -- you know, we've already
17 talked about it. You don't need to repeat it. But
18 if you know somebody and you haven't brought that to
19 the attention of the Court or the parties, now is the
20 time to do it.

21 Mr. Beck.

22 MR. BECK: The civilian witnesses that
23 we'll call in this trial may include Javier Alonso,
24 a/k/a Wino; Eddie Archuleta, a/k/a Spidey; Gerald
25 Archuleta, a/k/a Styx; Manuel Jacob Armijo, a/k/a Big

1 Jake; Rena Blea, Kyle Bridgman, Karen Cartwright,
2 Brandon Chavez, Linda Chavez; Benjamin Clark, a/k/a
3 Cyclone; Billy Cordova, a/k/a Little Shadow; Richard
4 Gallegos, a/k/a Dopey; James Garcia, a/k/a Daffy;
5 Phillip Gonzalez, a/k/a Grumpy; Samuel Gonzalez; Jose
6 Gomez, a/k/a Tiny; Sammy Griego, a/k/a Sammy G; Ruben
7 Hernandez, Jeremy Kaiser, Robert Lovato, a/k/a
8 Boo Boo; Leroy Lucero, a/k/a Smurf; Leonard Lujan,
9 Yvonne Madrid; Eugene Martinez, a/k/a Little Guero;
10 Robert Martinez, a/k/a Baby Rob; Roy Martinez, a/k/a
11 Shadow; Timothy Martinez, a/k/a Red; Josh Mirka; Ray
12 Molina, a/k/a Boxer; John Montano, a/k/a John John;
13 Mario Montoya, a/k/a Poo Poo; Steven Morales, a/k/a
14 Cyclone; Frederico Munoz, a/k/a Playboy; Daniel
15 Orndorff, a/k/a Sleepy; Joseph Otero, Charlene
16 Parker-Johnson; Fred Quintana, a/k/a Flaco; Brian
17 Rascon, a/k/a Cokes; Raymond Rascon, a/k/a Fuzz; Paul
18 Rivera, a/k/a Oso; Mario Rodriguez, a/k/a Blue;
19 Willie Romero, a/k/a Demon; Sapphira Serrano, Amber
20 Sutton, Michael Sutton, Lawrence Torres, Jesse
21 Trujillo, Jason Van Veghel, Leroy Vallejos, Eric
22 Young, Shauna Gutierrez, Joe Martinez, Augustine
23 Saenz, Albert Sanchez.

24 We may call the custodian of records from
25 the following: Dona Ana County Detention Center,

1 Hidalgo County Detention Center, Otero County Prison
2 Facility, Santa Fe Correctional Facility, Sandoval
3 County Detention Center, Cricket Communications
4 Incorporated, T-Mobile.

5 From the Dona Ana Detention Center, we may
6 call Patrick Howie; from the Federal Bureau of
7 Investigation, Bryan Acee, Tiffany Smith. From the
8 New Mexico Corrections Department, Ruben Alvidrez,
9 Louie Baca, Chris Barela, Christopher Cupit, Eloy
10 Flores, Marcello Garcia, Noah Green, Ronald Martin,
11 Raymond Martinez, Ralph Mintz, David Morales, Richard
12 Norman, James Pedraza, Renee Perea, William Roach,
13 Jesus Sandoval, Sergio Sapien, Jerry Spiers, Roberta
14 Stellman, Lee Spooner, Rosalind Renee Williams, Jerry
15 Roark.

16 From the New Mexico Department of Public
17 Safety, Shirley Garcia, Margo Mikeska, Jennifer Otto,
18 Kristin Radecki, Tiffany Smith, Kevin Strain, Eve
19 Tokumaru, Teresa Vigil, Tracy Zehringer.

20 From the New Mexico State Police, Thomas
21 Shane Arthur, George Bernal, Patrick Bucksath, Thomas
22 Christian, Sr., Michael Davies, Robert Duncan, Felipe
23 Gonzalez, Kiersten Harzewski, Wesley Lacuesta, Marco
24 Martinez, Richard Mathews, Warren Pershall, Norman
25 Rhoades, Jeffrey Smith, Albert Venegas, Alvino Vigil,

1 William Weisler, Richard Williamson, Paul Chavez, and
2 Clay Goret.

3 From the Office of the Medical
4 Investigator, Anne Bracey, Carolyn Lucero, Ian Paul,
5 Laura May Williams, Amy Elizabeth Wright, Cecilia Wu,
6 and Ross Zumwalt.

7 From the Socorro County Sheriff's Office,
8 Kacey McFadden and Manuel Monte.

9 State Fire Marshal Bill Farmer.

10 From the Valencia County Sheriff's Office,
11 Roque Fernandez, Otto King, Clayton Martinez, and
12 James Sanchez.

13 Some other civilian witnesses we may call.
14 Charlene Baldizan, Maxine Burns, Angela Gallegos, and
15 Matt Lucero.

16 Some other FBI agents we may call, Thomas
17 Neale, Lance Roundy, Joseph Sainato, Nancy Stemo.

18 From the New Mexico Corrections Department,
19 Adam Anaya, Eleanor Suzanne Dunn, Elizabeth Larson,
20 Jim Moore, James Mulheron, George Ochoa, Anthony
21 Romero, and Nancy Smith.

22 From the New Mexico State Police, Joe
23 Andazola, Nathan Lucero, Janice Madrid, Elizabeth
24 Martinez.

25 And from the Office of the Medical

1 Investigator, Carol Shirreffs.

2 Also we may call Michael Jaramillo, a/k/a
3 Criminal.

4 THE COURT: All right. We went through
5 these yesterday, and if you already have come to the
6 bench, I think we talked about anybody that knew any
7 of the people that Mr. Beck mentioned. We did it up
8 here at the bench.

9 So if you've already been up here and
10 talked, you don't need to do it again. But did
11 anybody in the second reading identify anybody there
12 that they know or had any sort of relationship with?
13 I'm not seeing any hands.

14 Mr. Cooper, do you want to do your list
15 again?

16 MR. COOPER: Your Honor, may we approach?

17 THE COURT: You may.

18 (The following proceedings were held at the
19 bench.)

20 THE COURT: You mentioned him again, but
21 you're not calling James Garcia?

22 MR. BECK: Yes, I'm sorry.

23 THE COURT: Is that what you're concerned
24 about?

25 MR. COOPER: We're concerned.

1 THE COURT: It showed up on the witness
2 list I had. Ms. Wild and Ms. Bevel took them and
3 they refiled.

4 MR. COOPER: I have the new list, and some
5 of the new people on the new list -- Jerry Roark, for
6 instance, Paul Chavez, Clay Goret were mentioned when
7 we read this today, but he still mentioned Daffy, and
8 so --

9 MR. BECK: He's not being called.

10 MR. COOPER: I think his name may be
11 mentioned, and it was probably good to mention him,
12 but he will not be called.

13 THE COURT: Okay.

14 MR. COOPER: 2091 does not mention James
15 Daffy Garcia.

16 MR. BECK: I did it.

17 MR. COOPER: You did it today but you
18 cleaned up and had the people that you added to the
19 2091. I was concerned. You added people and picked
20 them up and you mentioned them today.

21 MR. BECK: Mr. James Garcia will not be
22 here as a witness, and I don't think he'll show up in
23 court either.

24 MR. COOPER: Thank you.

25 THE COURT: Do you want to do your list?

1 MR. COOPER: I'd love to. Let's go. Thank
2 you, Judge.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: All right. Mr. Cooper, do you
6 want to repeat your list for the jurors to see if, in
7 a second reading, anybody recognizes anybody?

8 MR. COOPER: I will, Your Honor. Thank
9 you.

10 As I informed you yesterday, the defense
11 may call some of those same names that you just
12 heard. So as I mentioned yesterday, the defense may
13 call some of those same names that you heard Mr. Beck
14 read just now. We have a witness list that has been
15 prepared for all defendants in this case, a joint
16 witness list and the civilian witnesses on that list,
17 ladies and gentlemen, are Irene Abney, Charles
18 Asbury, Autumn Avila, Jesse Baca, Charlene Baldizan,
19 Valerie Carrejo, Braden Chavez, Edna Chavez, Veronica
20 Chavez, Mary Crumpton, Joe Doyle, Jonathon Duran,
21 Michelle Duran, Bill Elliott, Angela Gallegos,
22 Estevan Gonzalez, Jimmie Rae Gordon, Tami Gutierrez,
23 Jason Hoster, Jennifer Lopez -- not that one -- Leroy
24 Lucero, Mark Lugo, Arlene Mendez, Geraldine Martinez,
25 Mark Myers, Shaun Myers, Jim Naranjo, Daniel

1 Orndorff, Dina Ortiz-Chavez, Jolene Romero, Julian
2 Romero, Chad Rutter, Michael Sanchez, Paula Sanchez,
3 Troy K. Sanchez, Sapphira Serrano, John Shanks, Paul
4 Silva, Amber Sutton, Brandon Travis, and Benjamin
5 Wood.

6 Now, some of the law enforcement officers
7 that we may call would be Andrew Armijo, Nikki Baca,
8 James Braun, D. Braun, Jack Burkhead, Sonya Chavez,
9 Lawrence Tafoya, Felipe Gonzalez, Nathan Gurule, Noah
10 Guzman, Steven Hall, Rich Lewis, James Mowduk,
11 Brenton Myers, Trent Pedersen, Robert Perry, Royleen
12 Ross-Weaver, Daniel Sedillo, Ray Soliz, Roberta
13 Stellman, Reeve Swainston, Henry Telles, James
14 Tierney, Mark Torres, Vince Torres, Janine Arvizu,
15 Tim Bryan, Karen Green, Dr. Lesli Johnson, Dan E.
16 Krane, Suzanna Ryan.

17 We also may call the custodian of records
18 at the Lovelace UNM Rehabilitation Hospital, the
19 custodian of records at UNM Hospital, the custodian
20 of records at Valencia County Detention Center,
21 perhaps other custodians of records for other
22 facilities. Thank you.

23 THE COURT: Thank you, Mr. Cooper. Did
24 anyone, on second reading, recognize any name?

25 Ms. Vasquez, why don't you come up here to

1 the bench. Anybody else, on second reading, think
2 you might know somebody?

3 All right. Let's come up here to the
4 bench, Ms. Vasquez.

5 (The following proceedings were held at the
6 bench.)

7 THE COURT: All right, Ms. Vazquez. Who
8 did you recognize off that list?

9 MS. VAZQUEZ: Jennifer Lopez, but there's a
10 lot of them.

11 THE COURT: There's a lot of Jennifer
12 Lopezes.

13 MS. VAZQUEZ: This one lives in Clovis, New
14 Mexico, so I don't know if it's the same one.

15 THE COURT: All right, Mr. Cooper.
16 Ms. Vasquez is saying that there's a lot of Jennifer
17 Lopezes. She knows one in Clovis. Do you think your
18 one in Clovis -- do you think your Jennifer Lopez
19 is --

20 MR. COOPER: I don't believe so, Your
21 Honor.

22 THE COURT: You don't think so? Anything
23 else about her that might be an identifier?

24 MS. VAZQUEZ: I have her on Facebook if you
25 guys want to see her.

1 MR. COOPER: What does she do for a living?

2 MS. VAZQUEZ: Right now I don't think she's
3 working right now, but --

4 THE COURT: But she lives in Clovis? How
5 do you know this?

6 MS. VAZQUEZ: I went to high school and
7 we've been friends on Facebook for years now.

8 THE COURT: But you don't know what she's
9 doing?

10 MS. VAZQUEZ: No.

11 THE COURT: And you don't think it's your
12 Jennifer Lopez?

13 MR. COOPER: I don't think so. May I have
14 one moment?

15 THE COURT: Do you have your phone with
16 you?

17 MS. VAZQUEZ: I do.

18 THE COURT: Why don't you run back and grab
19 it and show a picture to Mr. Cooper, and see if it
20 happens to be the same person.

21 MR. BLACKBURN: We'll call her the real
22 Jennifer Lopez, not the fake Jennifer Lopez.

23 THE COURT: It's like when you see these
24 television ads, they always say, these are real
25 people, not actors, and I'm always going -- I guess

1 that communicates but -- Ronald Reagan, one time, was
2 sitting at a dinner party. The woman turns to him
3 and says, "I can't believe the United States elected
4 an actor."

5 He said, "I can't believe you can be
6 president and not be an actor."

7 MR. BLACKBURN: Fast forward.

8 THE COURT: Fast forward. Where did Mr.
9 Cooper go? Conferring.

10 MR. BECK: It's not going to help me. I
11 don't know if it's going to help him.

12 THE COURT: Is anybody beside Mr. Cooper
13 likely to know her? She's not on my lists. Is she
14 on somebody's list?

15 MR. COOPER: Yes, Your Honor, she's from
16 the Belen/Los Lunas area.

17 MS. VAZQUEZ: No.

18 THE COURT: Not the same one?

19 MS. VAZQUEZ: No, she lives in Clovis. The
20 other one is Jason Gurule. Did he ever live in
21 Clovis?

22 MR. COOPER: I doubt that. I imagine that
23 witness is also from Los Lunas.

24 THE COURT: Do you have any questions, Mr.
25 Beck?

1 MR. BECK: No, Your Honor.

2 THE COURT: How about you, Mr. Cooper?

3 MR. COOPER: No, Your Honor.

4 THE COURT: Anybody else? Thank you,
5 Ms. Vasquez.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: All right. Anyone else, with
9 the rereading of the list, think you know anybody on
10 the list?

11 All right. I'm now going to permit counsel
12 to conduct additional direct voir dire examination.
13 Again, thank you for your patience with the Court.

14 Mr. Beck, are you going to conduct it for
15 the Government?

16 MR. BECK: I am, Your Honor.

17 THE COURT: All right. Mr. Beck.

18 MR. BECK: I can speak loudly and maybe you
19 all will hear it, but Ms. Bean, the court reporter,
20 wants to take down what I'm saying also and she wants
21 to hear everything I'm saying.

22 So let me reiterate what the judge and
23 everyone has said up to this point. Thank you for
24 being here. Thank you for what you're doing. It is
25 obvious that each and every one of you appreciates

1 the importance of what you're doing here today and
2 the important service that you're doing. And I know
3 that it is not easy to be away from your jobs, your
4 friends, your family, your real lives for two days,
5 let alone for eight weeks. But it's obvious that you
6 all appreciate the importance of what you're doing
7 here.

8 Trial by jury is an important -- as the
9 judge said, it's a United States constitutional
10 guarantee. It is written in the Bill of Rights. It
11 is written into our Constitution. Is there anyone
12 here -- and before I get there, let me just say, as
13 we've been doing before, if anyone feels
14 uncomfortable answering one of my questions in front
15 of everyone, we can go up to the bench, and that's
16 fine. If I point you out and ask you a question
17 directly, I don't want it to offend you. I'm just
18 doing my job. So just let me know that you prefer to
19 answer up at the bench, and we'll go do that with the
20 judge and the other attorneys as we've been doing.

21 So as I said, is there anyone here who
22 thinks that the jury trial right is a bad idea and
23 that we should not have the right to a jury trial
24 here in the United States? Raise your hand. All
25 right.

1 Is there anyone here who has a problem with
2 the constitutional right to provide to every
3 defendant charged with a crime the right to a jury
4 trial? Raise your hand. I figure those would be the
5 easy ones, with what's gone on so far.

6 Now, the Court will instruct -- and as
7 we've been talking about, as you've heard that is not
8 only the right to a jury, but it's the right to a
9 unbiased or unprejudiced jury, and that's a very
10 important thing. We've been talking about it for two
11 days, but I want to make sure everyone understands
12 it.

13 Let's talk about the elephant in the room.
14 I wear a bow tie. I look different than everyone in
15 here and some people don't like bow ties, and some
16 people may hold that against me. And that's
17 perfectly fine. I as a lawyer don't have the right
18 to an unbiased jury pool. But these men do, and it's
19 important for everyone in here to realize that.

20 We've talked about tattoos. You will see
21 pictures of tattoos. We've talked about gangs.
22 There will be mention of gangs. It's important for
23 everyone to realize that this jury trial right
24 guaranteed by the Constitution includes the right to
25 an unbiased and unsympathetic jury. So what we

1 talked about the last two days, I'm going to ask you
2 again: Can everyone commit to set aside any
3 preconceived notions or biases you have, and when the
4 judge instructs you, that you must leave those things
5 outside the door and decide these men's guilt or not
6 guilty based on what's presented here in the
7 courtroom? Can everyone in here do that? If you
8 can't do that, raise your hand.

9 I want to talk about guilty beyond a
10 reasonable doubt. That's something that you've heard
11 mentioned. Many of you have sat on juries and even
12 criminal juries. That's our burden. It's the
13 prosecution, the United States' burden to prove to
14 you all, based on evidence and information presented
15 here in court, that these men are guilty beyond a
16 reasonable doubt. That is the highest standard in
17 the courts, and it's something we embrace.

18 Now, Ms. Wise, I'm going to pick on you
19 over here. Yeah, I think I know your answer to this,
20 but I'm going to ask it anyway. Can you -- if you
21 hear evidence in this case of murder and of multiple
22 murders, can you still listen to the judge's
23 instruction and presume these men innocent until
24 proven guilty beyond a reasonable doubt?

25 MS. WISE: Are you saying particularly

1 murder? I mean, is that the word that you're --

2 MR. BECK: Yeah, that's the question I'm
3 asking you right now, is that if evidence is
4 presented about murder, and even multiple murders,
5 can you still heed the judge's instruction to presume
6 these men innocent until proven guilty?

7 THE COURT: Mr. Sindel?

8 MR. SINDEL: Your Honor, I would object to
9 the use of the phrase "murder." I think that assumes
10 that there is a situation in which it's an
11 intentional crime. I think it may be a homicide
12 rather than a deliberative crime. I think murder is
13 an inappropriate question to be asking this
14 particular juror.

15 THE COURT: Well, I'll let the Government
16 conduct it, and then you can ask the jurors what
17 their feelings are on that.

18 But Mr. Beck. Overruled.

19 MR. BECK: Ms. Wise, do you want me to ask
20 again?

21 MS. WISE: Yes, please.

22 MR. BECK: Sure. If in the course of this
23 trial there is evidence presented about murders and
24 even multiple murders, can you still listen to the
25 judge's instruction and start this off presuming

1 these men innocent until proven guilty beyond a
2 reasonable doubt?

3 MS. WISE: Yes, I can.

4 MR. BECK: And Ms. Duncan, can you do the
5 same?

6 MS. DUNCAN: Yes, I can.

7 MR. BECK: Is there anyone who can't do
8 that? If there is evidence of murders or multiple
9 murders, is there anyone who can't presume these men
10 innocent?

11 Ms. Dwore, heading over the other
12 direction, do you think that the United States should
13 have to prove the guilt of any one of these
14 defendants guilty beyond all or any possible doubt,
15 instead of beyond a reasonable doubt?

16 MS. DWORE: If the law says "reasonable,"
17 then that's what it is.

18 MR. BECK: Okay. Fair enough. Thank you,
19 Ms. Dwore.

20 Is there anyone who disagrees with
21 Ms. Dwore? All right. Not seeing anyone raise their
22 hands.

23 Mr. Skousen? Did I pronounce that right?

24 MR. SKOUSEN: Yes, you did.

25 MR. BECK: So I read through the

1 questionnaire, and I understand that you're an IT
2 manager; is that right?

3 MR. SKOUSEN: That's correct.

4 MR. BECK: And do you as an IT manager --
5 do you have people underneath you? Do you manage
6 other people?

7 MR. SKOUSEN: Yes, I manage other people.

8 MR. BECK: About how many?

9 MR. SKOUSEN: About 15.

10 MR. BECK: In managing other people, do you
11 work at Sandia Labs? Did I remember that right?

12 MR. SKOUSEN: Yes, I do. That's correct.

13 MR. BECK: In your organization, do you
14 think that respect is an important thing in your
15 organization?

16 MR. SKOUSEN: Absolutely.

17 MR. BECK: And in managing other people, do
18 you think that showing them respect and receiving
19 respect back is an important management skill?

20 MR. SKOUSEN: Yes, absolutely.

21 MR. BECK: What are some difficulties that
22 you have found in managing your employees over the
23 years?

24 MR. SKOUSEN: One of the biggest
25 difficulties are perceptions versus realities. A lot

1 of times there will be perceptions of intent behind
2 behaviors when, in reality, you know there was no
3 intent. People will misperceive quite often what's
4 in an email or something that was said, and misread
5 that, become offended or have issues with it. So
6 that's really where I see a lot of issues.

7 MR. BECK: So for instance, taking emails
8 out of context and misunderstanding what was written
9 in the email?

10 MR. SKOUSEN: Right. Or someone writes a
11 really stark email message, and they think, Oh, that
12 person is yelling at me, or whatever, but they
13 misconstrue the intent behind it.

14 MR. BECK: And to be fair, sometimes in an
15 organization are there people who have a more
16 difficult time getting along than other people?

17 MR. SKOUSEN: Yes, there are people who
18 tend to get offended very easily. And also at
19 Sandia, there are those who tend to be somewhat
20 arrogant, and so you've got kind of -- you've got
21 those people who, you know, think they walk on water
22 and they won't listen to anybody, so they can be very
23 difficult to get along with. And then again, there
24 are some who get very easily offended, so you end up
25 having to deal with those types of issues.

1 MR. BECK: And that sort of goes back to
2 what we were talking about earlier about respect,
3 right, showing respect?

4 MR. SKOUSEN: Absolutely.

5 MR. BECK: For the people who maybe think
6 they walk on water or a little confident or, of
7 course, some of the other employees, do you find that
8 sometimes you've encountered people who maybe, you
9 know, try to skate by on their reputation or try not
10 to work as hard as the others? Do you find that in
11 managing other employees?

12 MR. SKOUSEN: Yes, we do run into that.

13 MR. BECK: And in supervising those
14 employees at Sandia Labs generally, have you ever
15 heard the term, "You're only as strong as your
16 weakest link"?

17 MR. SKOUSEN: Yes, I've heard that.

18 MR. BECK: Do you think to a certain extent
19 that's true?

20 MR. SKOUSEN: No, I don't.

21 MR. BECK: Really? So why don't you think
22 that?

23 MR. SKOUSEN: Everybody has strengths and
24 weaknesses; right? And so you may have a tremendous
25 amount of strengths in multiple -- the way you work

1 as a team member, and you may have one weak link in
2 there, a weakness somewhere in your behavior or on
3 the job. But that I look at as an opportunity where
4 there can be strength and overcome the weaknesses. I
5 don't think there is any reason to dismiss a person
6 on their ability to help each other.

7 MR. BECK: I can see why you're a manager.
8 Let me press you on that a little bit further. Do
9 you think that if someone is deliberately working
10 against the organization's purpose, if someone in
11 your IT squad -- and again, I'm confident this would
12 never happen -- but if someone in the IT squad there
13 is deliberately playing video games throughout the
14 time that you're all sitting there working on an IT
15 deliverable that's due in a couple of days, does that
16 present a problem for your organization?

17 MR. SKOUSEN: Oh, yeah, absolutely.

18 MR. BECK: And in that case, getting back
19 to being only as strong as your weakest link, that
20 would hold back the organization; is that right?

21 MR. SKOUSEN: Yes, it would. It would
22 impact the team effort that we're working on and
23 definitely impact the deliverables.

24 MR. BECK: And if someone like that was in
25 your organization, would you want them to stay around

1 even if they're not doing their job, or would you try
2 to work with your management team to see if there was
3 a better fit, or if they had to leave?

4 MR. SKOUSEN: We would work with them and
5 their management team to see if we can identify the
6 cause of why they're doing it, and see if we can
7 resolve it to see if there is a better fit for them
8 for the organization.

9 MR. BECK: Great. Thank you for sharing.

10 Mr. Bunnell. Am I saying that right?

11 MR. BUNNELL: Bunnell.

12 MR. BECK: So you are now or have been in
13 the Air Force?

14 MR. BUNNEL: I was in the Air Force for
15 seven years. I got out not quite three years ago.

16 MR. BECK: You may need to get closer to
17 the mic. Now you see why I grabbed the mic. Here
18 she comes.

19 Getting back to respect, is respect
20 important in the Air Force?

21 MR. BUNNEL: Absolutely.

22 MR. BECK: Is it important in all military
23 organizations?

24 MR. BUNNEL: Yes, definitely.

25 MR. BECK: And just as I was talking about

1 a minute ago with Mr. Skousen, about, you know,
2 you're only as strong as your weakest link, do you
3 think that's true in the military?

4 MR. BUNNEL: Yeah, definitely. I mean, you
5 may have other people covering, and if it's a weak
6 individual, you have to work around him and I guess
7 counter for that, but yeah, it's definitely
8 challenging when you have dead weight.

9 MR. BECK: And in the military, correct me
10 if I'm wrong, one of the intentions in the military
11 is that they cultivate an environment where you, as
12 an organization, rely on your other servicemen to
13 help bring that person up; is that right?

14 MR. BUNNEL: Yes, sir.

15 MR. BECK: But if someone just doesn't fit
16 in, is unwilling -- and I don't know if you've
17 experienced this -- but even in the military, in that
18 organization, have you seen -- or do you think it may
19 be true that someone just doesn't fit in that
20 environment and maybe has to leave?

21 MR. BUNNEL: Yes, sir.

22 MR. BECK: And even if all the other
23 service members tried as hard as they could, that at
24 some point that decision just has to be made and
25 someone has to leave?

1 MR. BUNNEL: Absolutely. It definitely
2 happens.

3 MR. BECK: Thank you, Mr. Bunnell.

4 Now, I'm going to open it up to everyone.
5 I picked on a few people. Who here has perhaps
6 noticed an increase in crime in their neighborhood in
7 the last few years? Wow, lots of names here. We'll
8 go up first to Ms. Nitterauer; is that right?

9 Tell us about that, Ms. Nitterauer.

10 MS. NITTERAUER: I moved to Silver City
11 from Albuquerque because of the increase in crime in
12 my neighborhood up in the North Valley.

13 MR. BECK: Okay. And what type of crime
14 did you see increasing, generally?

15 MS. NITTERAUER: Generally, it's burglaries
16 and thefts and -- but we hear an awful lot of gun
17 shots going on, and there's been several SWAT
18 situations lately.

19 MR. BECK: And that's one of the reasons or
20 the reason that you moved to Silver City?

21 MS. NITTERAUER: Yes.

22 MR. BECK: I like Silver City. I used to
23 do the bike race there. A very good place to be.

24 MS. NITTERAUER: Coming up.

25 MR. BECK: That's right. I'll miss it.

1 I'll be here with all of you or whoever is lucky
2 enough to get chosen.

3 Does anyone agree with Ms. Nitterauer, has
4 experienced the same thing? Raise your hand.

5 You are Ms. Trujillo. Do I have -- well, I
6 didn't need to look at the sheet.

7 MS. TRUJILLO: I live on the West Side in
8 Albuquerque, and where I live there is a park not too
9 far, and we always have police activity there.
10 There's been burned bodies found there. There's
11 definitely drugs there, so it's rough. I can't even
12 take my four-year-old to the park there.

13 MR. BECK: And is that -- I mean, is that a
14 concern for you with your four-year-old that you
15 can't take him to the park?

16 MS. TRUJILLO: Well, yeah, you have to
17 drive out of our neighborhood just to go take him to
18 a park.

19 MR. BECK: Thank you, Ms. Trujillo.

20 Did anyone else raise their hand?

21 Oh, over here we've got Mr. Kennedy.

22 MR. KENNEDY: Yeah, I'm currently actually
23 moving. The apartment complex that I live in is
24 right next to a park, and we have police there every
25 single night. I've had my dumpster lit on fire, my

1 tires slashed, brandishing firearms, domestic
2 violence, disputes every single night.

3 MR. BECK: And so I guess my other question
4 is: You've seen that increase in the last couple of
5 years or something to that effect?

6 MR. KENNEDY: Yeah, the last five to eight
7 years I've seen a lot more of it. When I was a kid I
8 never noticed it, or it just didn't happen as much
9 but...

10 MR. BECK: Thank you for sharing, Mr.
11 Kennedy.

12 And we're going to stick in this
13 neighborhood. So I want to talk to you all about
14 conspiracy. And has everyone here heard the term
15 "conspiracy" before? I am seeing a lot of shaking
16 heads. The judge will tell you -- he'll give you
17 instruction on what that means at some point, but for
18 purposes of right now, we're just going to talk about
19 it as some form of legal agreement. Okay?

20 Now, Ms. Williams. Let's go rob a bank,
21 you and I; all right? We're going to go rob the Bank
22 of the West here across the street. But I want to
23 keep my distance from it, so what I'm going to do,
24 I'm going to mastermind the operation, I'm just going
25 to tell you what we're going to do, and you can go

1 and decide on all the details. Does that sound all
2 right, Ms. Williams?

3 MS. WILLIAMS: Okay.

4 MR. BECK: Mr. Kennedy, getting back to
5 you, Ms. Williams -- she and I talked, and now she's
6 going to ask you to wear the mask and to go into the
7 bank to rob the teller. Is that all right? And
8 don't worry, Ms. Williams -- she's got the security
9 code. All right? She's going to make sure the
10 cameras are off. She's got the bank vault code. So
11 all you have to do is put on the mask, rob the bank;
12 is that right, Mr. Kennedy?

13 MR. KENNEDY: No.

14 MR. BECK: Try the other answer.

15 MR. KENNEDY: Yes.

16 MR. BECK: I like that answer better.
17 Doing good so far.

18 Mr. Kulpa, so you're the teller. And
19 Ms. Williams has now gotten you involved, and you've
20 agreed to do it. You're the one who gave her the
21 bank vault combination, and you're going to turn off
22 the security cameras. Okay? But Mr. Kennedy doesn't
23 know you're involved, and you don't want him to know
24 you're involved; right?

25 MR. KULPA: Right.

1 MR. BECK: Exactly. So Ms. Scifres -- did
2 I say that right?

3 MS. SCIFRES: Good enough.

4 MR. BECK: Is that not right?

5 MS. SCIFRES: Scifres.

6 MR. BECK: All right. Good. I got that
7 right.

8 Ms. Scifres, we need a getaway driver. And
9 we want to be inconspicuous, so your 1992 neon-purple
10 Ford Fiesta is the perfect getaway car; right?

11 MS. SCIFRES: Right.

12 MR. BECK: So Ms. Scifres, you're going to
13 be the getaway driver.

14 Ms. Williams, she's gotten you all set up.
15 All you've got to do is drive Mr. Kennedy to the
16 bank, pick him up afterwards.

17 Now, although I've set this all up, I'm
18 very fair, okay? We're going to go 50/50. 50 for
19 me; 50 for you all to split. I, of course, because I
20 said I want to keep my distance, I'm going to be at
21 the Denny's across the street. But I'm going to be
22 watching everything from there to make sure this all
23 happens right. So we're going to go and we're going
24 to rob a bank.

25 But of course, it all goes wrong.

1 Ms. Scifres, your 1992 neon-purple Ford Fiesta
2 doesn't start back up after you robbed the bank.

3 Mr. Kulpa, you gave Ms. Williams the wrong
4 bank code, and you forgot to turn off the security
5 cameras.

6 Mr. Kennedy, you did good, you robbed the
7 bank, but you dropped all the cash coming outside,
8 and you're met by the police because you didn't turn
9 off the security cameras.

10 So Ms. Scifres, is Mr. Kulpa guilty?

11 MS. SCIFRES: I believe so.

12 MR. BECK: Okay. Just based on the
13 information that we have so far --

14 MS. SCIFRES: Yes.

15 MR. BECK: -- Mr. Kulpa, is Ms. Williams
16 guilty?

17 MR. KULPA: What did she do?

18 MR. BECK: She is the one that got you
19 involved, recruited you.

20 MR. KULPA: Yes.

21 MR. BECK: Yes, she's guilty.

22 Ms. Williams, is Mr. Kennedy guilty?

23 MS. WILLIAMS: Yes.

24 MR. BECK: Is that a yes?

25 MS. WILLIAMS: Yes.

1 MR. BECK: Now, if you can grab the
2 microphone, Ms. Lee --

3 MS. LEE: Yes.

4 MR. BECK: -- the \$64,000 question. Am I
5 guilty?

6 MS. LEE: You are.

7 MR. BECK: But I was across the street at
8 the Denny's.

9 MS. LEE: You're procuring cause -- you're
10 the one who set it in motion.

11 MR. BECK: I'm the mastermind. Okay.
12 Good.

13 Now, is there anyone here who doesn't agree
14 with Ms. Lee that I'm guilty, even though I was
15 across the street at the Denny's? Yes, and you
16 are -- hold on, let me look at it. You are Ms.
17 Solis?

18 MS. SOLIS: Well, I mean, I'm assuming
19 these are adults, so they have their own mind. They
20 can make their own decisions.

21 MR. BECK: Sure.

22 MS. SOLIS: You can tell them to do that,
23 but they can say, "No, I'm not doing it."

24 MR. BECK: That's right.

25 MS. SOLIS: So I don't think you should be

1 guilty of that. They did it. They're the ones that
2 should be guilty of it.

3 MR. BECK: Okay. If you wanted to go home
4 for the next eight weeks, you might have just got
5 yourself in trouble for that. You might be staying
6 on the jury. But no, I'm going to press you on that
7 a little bit. So as I said, I kind of said for
8 purposes of this, the definition of conspiracy is
9 sort of a legal agreement; right? And so did I agree
10 with Ms. Williams to make sure that the bank was
11 robbed?

12 MS. SOLIS: I'm sorry? Can you repeat?

13 MR. BECK: Yeah. In this -- just the
14 limited information you have here in this
15 hypothetical, did Ms. Williams and I agree to rob the
16 bank?

17 MS. SOLIS: You talked about it. I'm not
18 sure about the agreement. She agreed to do what you
19 told her to do.

20 MR. BECK: Okay. So I see what you're
21 getting at. And I agree with you, we don't have --
22 in this hypothetical there is no written contract;
23 right? There is no written agreement, and I don't
24 think Ms. Williams and I actually said, "I agree with
25 you, you agree with me," but do you have other

1 evidence or information that may show that
2 Ms. Williams and I agreed to rob the bank?

3 MS. SOLIS: Other evidence? No.

4 MR. BECK: Does anyone else think that
5 there is other evidence that Ms. Williams and I
6 agreed? Yes, Mr. Yancey?

7 MR. YANCEY: Because you agreed to the
8 payment of the 50 percent, you would be culpable, I
9 believe. Is that not correct?

10 MR. BECK: That's your opinion, but I think
11 that's evidence, right, that we agreed to a 50
12 percent payment?

13 MR. YANCEY: Right, and it would be the
14 collection of that which would show your involvement
15 in the activity.

16 MR. BECK: Sure. Is there anything else,
17 maybe that even -- and Mr. Yancey, I'll stick with
18 you -- even that I didn't do that shows that me and
19 Ms. Williams agreed?

20 MR. YANCEY: Nothing.

21 MR. BECK: How about that Mr. Kennedy went
22 into the bank with a mask, and Mr. Kulpa gave
23 Ms. Williams the vault code and tried to turn off --
24 he didn't do a good job of turning off the security
25 cameras, but you tried. Does that show that

1 Ms. Williams and I agreed?

2 MR. YANCEY: That's debatable. It depends
3 on the manner in which you shared your plan for this
4 whole activity. If there is physical evidence that
5 you came up with the plan, and that plan was the one
6 that was implemented as well as you received payment
7 for the heist, then it would be showing that you were
8 directly involved with the incident.

9 MR. BECK: Sure. And so I think we're both
10 agreeing that the fact that a bank was robbed and the
11 fact that in this hypothetical Ms. Williams and I
12 talked about it, and I told her to make sure things
13 get done, and then it happens, that seems to show
14 that Ms. Williams and I had an agreement that the
15 bank would get robbed; right?

16 MR. YANCEY: That would seem so.

17 MR. BECK: So I'll come back to you, Ms.
18 Solis, now. Hearing Mr. Yancey's pretty good
19 argument that there is a lot of other evidence there,
20 what are you thinking?

21 MS. SOLIS: I still stick with my story.

22 MR. BECK: All right. So now I want to
23 track this. I want to make sure that you and I are
24 on the same page. Because I talked to Ms. Williams,
25 because I talked to Ms. Williams, she and I agreed, I

1 told her to go make sure all the details were done, I
2 paid all of them 50 percent, you think that I'm not
3 guilty because everyone else from there made their
4 own decision; is that right?

5 MS. SOLIS: Correct.

6 MR. BECK: Now, if the judge's instruction
7 says -- and I don't know what the judge is going to
8 instruct in this case right now, because we haven't
9 gotten there. But if the judge's instruction says
10 something different than people make up their own
11 minds and the person that put the plan in place is
12 guilty, could you follow that instruction?

13 MS. SOLIS: Yes, I can.

14 MR. BECK: So even if -- even though you're
15 thinking that people make their own decisions, if an
16 instruction is different from that, you, knowing as a
17 juror you take an oath to follow the instruction, you
18 could follow whatever instruction you're given; is
19 that right?

20 MS. SOLIS: Yes, I can.

21 MR. BECK: Fair enough. Thank you, Ms.
22 Solis.

23 Is there anyone who can't, as Ms. Solis
24 did, follow the judge's instruction that's different
25 than that? Raise your hand. If you wanted to go

1 home for the next eight weeks, you just missed your
2 chance, I'll tell that you.

3 Now we're going to move on here. Because
4 this plan went totally haywire -- I can understand
5 the 1992 Ford Fiesta. Those are untrustworthy. But
6 Mr. Kennedy dropping cash, not turning off the
7 cameras -- so now we're going to trial. And
8 Ms. Williams, Ms. Scifres, Mr. Kulpa, all of you have
9 lawyers who arrange for a cooperation agreement with
10 the Government, and you're going to be used as an
11 informant witness to testify at the trial against me
12 and Mr. Kennedy. And under this agreement,
13 Ms. Williams, Mr. Kulpa, Ms. Scifres, you may be
14 provided some benefit in terms of sentencing or
15 punishment for testifying in the case against me and
16 Mr. Kennedy. And the judge will instruct all of you
17 that these agreements are lawful and proper. The
18 rules of the Court expressly permit these type of
19 agreements.

20 Now, Ms. Reser -- am I saying that right --

21 MS. RESER: Yes.

22 MR. BECK: Okay.

23 MS. RESER: Yes. I was just making sure.

24 MR. BECK: Ms. Reser, will you be able to
25 follow the judge's instruction and listen to the

1 testimony of Ms. Williams, Ms. Scifres, and Mr. Kulpa
2 in the trial against me?

3 MS. RESER: Yes, I would.

4 MR. BECK: Ms. Griego, will you be able to
5 follow the judge's instructions and listen?

6 MS. GRIEGO: Yes, I would.

7 MR. BECK: And now Ms. Morales -- pass it
8 all the way down, down here at the end. Ms. Morales,
9 why may it be helpful for Ms. Williams and
10 Mr. Scifres and Mr. Kulpa to testify in the trial
11 against me?

12 MS. MORALES: Because they were the only
13 ones that had a part of the conversation with you,
14 besides you.

15 MR. BECK: Well, Ms. Williams is the only
16 one. Ms. Williams had the conversation with them;
17 right?

18 MS. MORALES: Yes.

19 MR. BECK: So assuming no one else was
20 around, is it important to have their testimony in
21 the trial against me?

22 MS. MORALES: Yes, if anything, I would put
23 a little bit more stock into theirs, because at that
24 point they know what sentence to get.

25 MR. BECK: I think to Ms. Solis' point and

1 Mr. Yancey's earlier, this may help their testimony
2 about their conversation with Ms. Williams, because I
3 wasn't there. It may help show that there was an
4 agreement between me and Ms. Williams for the bank to
5 get robbed. Do you agree with that?

6 MS. MORALES: Yes.

7 MR. BECK: And I think, as you said before,
8 they're really the only ones who would know that
9 information; right?

10 MS. MORALES: Yes.

11 MR. BECK: Now, Mr. Doom. So would you be
12 willing to listen to Ms. Williams, Ms. Scifres, and
13 Mr. Kulpa's testimony at trial against me?

14 MR. DOOM: Listen to it, yes.

15 MR. BECK: Listen to, yes. Do you have
16 some reservation about that?

17 MR. DOOM: Kind of a he-said-she-said sort
18 of a situation between you and Ms. Williams, isn't
19 it?

20 MR. BECK: Seems like it is; right? Okay.
21 But what other tools can you use to see if it's maybe
22 more than just a he-said-she-said against me and
23 Ms. Williams?

24 MR. DOOM: The fact that she set up the
25 other portion of it.

1 MR. BECK: So I'm going to use a fancy
2 lawyer word here. I'm sure most of you are familiar
3 with it, but I'm sorry if I do that. Is to
4 corroborate the information; right?

5 MR. DOOM: Right.

6 MR. BECK: Make it more likely.

7 MR. DOOM: (Nods.)

8 MR. BECK: So it sounds to me like maybe if
9 it was just Ms. Williams and me, you wouldn't know
10 who to believe.

11 MR. DOOM: No, put no more stock in her
12 than you.

13 MR. BECK: Put more stock in her than me?

14 MR. DOOM: No more.

15 MR. BECK: No more. Okay. Good. I agree.
16 Because she may get a benefit from her testifying.

17 MR. DOOM: Right.

18 MR. BECK: So do you agree with me that she
19 may have -- I mean, maybe you tend to put less stock
20 in her testimony than mine.

21 MR. DOOM: If she's looking at more jail
22 time, depends what they're trying to charge you with,
23 I suppose.

24 MR. BECK: Fair enough. But you think that
25 she has already been caught; right? And as I said,

1 she may be provided some benefit for testifying;
2 right?

3 MR. DOOM: Right.

4 MR. BECK: But now you've also got, I think
5 as you said, you've got other information to look at;
6 right?

7 MR. DOOM: Right.

8 MR. BECK: And that may include
9 Ms. Scifres', you know, testimony that Ms. Williams
10 told her to have the car; right?

11 MR. DOOM: Right.

12 MR. BECK: And would it also help put the
13 story together if we heard from the police officers
14 who got to the scene and said, "Yeah, I saw
15 Ms. Scifres' 1992 purple-neon Ford Fiesta out there,
16 and I remember it because it was neon purple." Would
17 that help?

18 MR. DOOM: Yes.

19 MR. BECK: Because it tends to corroborate
20 her story again; right?

21 MR. DOOM: Right.

22 MR. BECK: If you heard from the police
23 officers who caught Mr. Kennedy with his money all
24 over the floor, would that tend to help?

25 MR. DOOM: Yes.

1 MR. BECK: So it sounds like even though --
2 sounds like you might have a problem with the
3 he-said-she-said. You have other tools that you can
4 use to figure out if the pieces fit together.

5 MR. DOOM: The more facts they have, the
6 easier it would be for you to, like you say,
7 corroborate her story.

8 MR. BECK: Thank you, Mr. Doom.

9 Is there anyone who disagrees with Ms.
10 Morales and Mr. Doom, and just plain, flat out will
11 not listen to Ms. Williams, Ms. Scifres, and
12 Mr. Kulpa? No offense to all of you. Yes, and you
13 are -- I don't have my sheet with me, and I don't
14 remember.

15 MR. McKINZIE: I have a hypothetical
16 question.

17 MR. BECK: Sure. And say your name first.

18 MR. McKINZIE: Mark McKinzie.

19 MR. BECK: All right, Mr. McKinzie.

20 MR. McKINZIE: So if the conspirator
21 witnesses are all facing jail time, obviously they
22 have an incentive to turn on you. When this goes to
23 trial, are the jurors told what they get for their
24 testimony against you?

25 MR. BECK: Not in my hypothetical. In my

1 hypothetical -- I see where you're getting at. In my
2 hypothetical, all you're left with is that they may
3 get some benefit. And so in either of those
4 situations, we can play them out; right? Let's say
5 that we know that they already got some benefit.
6 Would that matter to you one way or the other with
7 what I talked about with Mr. Doom?

8 MR. McKINZIE: Yeah, because if they're all
9 getting reduced sentences to send you to prison, then
10 they have the incentive to lie and help convict you
11 for their reduced terms or whatever benefit they get
12 from it.

13 MR. BECK: Okay. I want to play the other
14 side of it with you now. Let's say we don't know.
15 They may get reduced sentences if they testify, and
16 who makes that decision may be the lawyers who are
17 prosecuting me, and the judge up there on the stand.
18 Would that affect what we talked with about Mr. Doom?

19 MR. McKINZIE: It might, because then there
20 is an inherent bias in the system one way or the
21 other. I don't know which way the bias is going.

22 MR. BECK: Sure. Sure. No, I agree with
23 you.

24 MR. McKINZIE: Yes.

25 MR. BECK: I think probably everyone here

1 does. And I think that's what Mr. Doom was getting
2 at, too, that it's sort of a he-said-she-said; right?
3 And I think you agree -- it sounds like Mr. Doom
4 would agree with you -- that they have more of an
5 incentive to testify against me.

6 MR. McKINZIE: Yes.

7 MR. BECK: Now, as I said, are there
8 certain other facts that we can use to help maybe
9 test their story?

10 MR. McKINZIE: Well, unless Ms. Williams
11 came up with the idea herself to rob the bank and
12 everyone is pointing back up to you, obviously, in my
13 mind, I would assume you had something to do with it
14 and they just didn't pick you out on the street as
15 the mastermind.

16 MR. BECK: Sure. But we had pretty limited
17 information about me; right? I mean, I know I told
18 you I was at Denny's, but we don't know that the
19 police know that; right?

20 MR. McKINZIE: Right.

21 MR. BECK: So let's say the police don't
22 know that. Let's say that now we hear testimony from
23 the police officer, and the police officer says,
24 "Yeah, when I went across the street to Denny's,
25 after I finished up the arrest, and I saw Mr. Beck

1 there, he looked at me and he ran out the door
2 sprinting, jumped into his car, and drove away, 90
3 miles an hour," because I, of course, have a nice
4 Camaro. I don't have the Ford Fiesta. Would that be
5 helpful?

6 MR. McKINZIE: Well, it's incriminating to
7 you.

8 MR. BECK: Right.

9 MR. McKINZIE: But there could be another
10 reason you ran away.

11 MR. BECK: Sure, of course. I just like to
12 drive fast. But it sounds like that would be
13 helpful?

14 MR. McKINZIE: Oh, yes.

15 MR. BECK: Okay. So that would be helpful,
16 and then you've got the 1992 Ford Fiesta at the
17 scene, you've got Mr. Kennedy's bag of cash at the
18 scene; right? So it sounds like, as I talked about
19 with Mr. Doom, now you've got some more corroborating
20 information for that; is that fair to say?

21 MR. McKINZIE: Absolutely.

22 MR. BECK: Let's say that the police also
23 testify that -- well, I'll play this differently.
24 Let's say that Mr. Kulpa testifies. Mr. Kulpa says
25 that he actually had been a teller at a bank that was

1 robbed before in Minneapolis. He was part of the
2 bank-robbing group. I was part of that bank robbing
3 group, and that I moved there, to Las Cruces, a week
4 before the bank robbery happened, a week before we
5 tried to rob the U.S. Bank across the street. Is
6 that information helpful to you?

7 MR. McKINZIE: It's suspicious, but by
8 itself it doesn't mean your involvement.

9 MR. BECK: Sure. By itself, it doesn't
10 mean. But now you've got Ms. Williams saying that
11 she and I agreed. You've got Ms. Scifres' car at the
12 scene, you've got Mr. Kennedy's bag of cash on the
13 ground, and now you've got Mr. Kulpa telling you that
14 he's done this before, he did it with me before, and
15 that I moved there right before this happened. Does
16 that tend to corroborate that I was involved?

17 MR. McKINZIE: It's not looking good for
18 you.

19 MR. BECK: I agree with you, but does
20 that -- do you see what I'm saying?

21 MR. McKINZIE: Absolutely.

22 MR. BECK: So anyone else -- you know, and
23 I think what I'm kind of getting to you with -- I
24 think you said you had sat on a jury before. Am I
25 right? No, you've never sat on a jury before.

1 And the judge will instruct you about
2 setting aside our biases and the presumption of
3 guilt. But do you see that you don't come into this
4 room, even though this is your first time being up
5 here on a jury panel -- you see that you don't just
6 leave all your tools at home; that you bring some
7 tools with you to figure this stuff out?

8 MR. McKINZIE: Right.

9 MR. BECK: Does that help maybe put you at
10 ease a little bit more about serving on this jury, to
11 see that you do have some tools to bring to the
12 table?

13 MR. McKINZIE: Sure.

14 MR. BECK: And does everyone see that you
15 all, when you come through that door, you don't leave
16 your common sense and your reason and your ability to
17 make inferences at the door.

18 Thank you, Mr. McKinzie. I appreciate it.

19 Now, I've sort of gone over this, but I
20 want to talk to you all about direct and
21 circumstantial evidence. So we've all seen movies;
22 right? These sort of crime movies or crime TV shows,
23 and you've got the lawyer going to the guy who is
24 accused of the crime. It may be a girl, but
25 oftentimes it's a guy. I don't mean to exclude

1 anybody. But usually it's a guy in the TV shows, and
2 the guy says, "I'm never going to jail. Their case
3 against me is all circumstantial"; right? We've all
4 seen that and heard of direct and circumstantial
5 evidence.

6 Well, I want to do another hypothetical.
7 This one will be a little bit quicker.

8 Ms. Pellegrino, sounds like you recently
9 moved to Las Cruces.

10 DR. PELLEGRINO: Three years ago, two and a
11 half.

12 MR. BECK: You've been here for a while.
13 In this hypothetical we're not going to do today.
14 We're going to go back, say, two months so the
15 beginning of February. You wake up. How long is
16 your drive to work?

17 DR. PELLEGRINO: About 15 minutes.

18 MR. BECK: Fifteen minutes. Okay. Great.
19 You wake up, you watch the news. The news lady on
20 Channel 7 says, "It's definitely going to snow
21 today," 60 percent chance, of course, because that's
22 as much as we're ever going to have in Las Cruces.
23 For us, that's definitely going to snow; right?

24 DR. PELLEGRINO: For us that's definitely
25 going to snow.

1 MR. BECK: So you go to work knowing that
2 it's going to snow. You bring your umbrella. You
3 leave work that night. It's dark outside, it's
4 cloudy, it's cold, the wind is blowing a little bit.
5 On your way home, you start to get little snowflakes
6 dropping on your car; right?

7 DR. PELLEGRINO: Um-hum.

8 MR. BECK: You get back home. Where did
9 you go to dental school?

10 DR. PELLEGRINO: University of Missouri at
11 Kansas City.

12 MR. BECK: All right. So you're more used
13 to the snow than I am.

14 DR. PELLEGRINO: Yeah.

15 MR. BECK: So now your friend from
16 University of Missouri Kansas City calls, and she
17 says, "Hey, Ms. Pellegrino, how is the weather out
18 there in Las Cruces?"

19 What are you going to say?

20 DR. PELLEGRINO: "It's lightly snowing."

21 MR. BECK: I'd say heavily snowing, but you
22 can say lightly snowing.

23 Let's do this again. Same thing, two
24 months ago, February 10th, you wake up, you put on
25 the news, the news lady on Channel 7, weather lady,

1 tells you it's definitely going to snow, 60 percent
2 chance, definitely going to snow. You drive 15
3 minutes to work, work, drive back, it's dark outside,
4 it's cloudy, it's windy, it's cold. You drive home,
5 park, you get out, you go to sleep.

6 The next morning, you wake up and you go to
7 the door and make your coffee, and you look outside,
8 and it is a winter wonderland outside, which, of
9 course, for Las Cruces means there is a dusting of
10 snow on the rocks, and none on the pavement; right?

11 DR. PELLEGRINO: Right.

12 MR. BECK: Now, your friend from dental
13 school in Missouri, Kansas City, calls, and she says,
14 "Ms. Pellegrino, how was the weather last night in
15 Las Cruces?" What are you going to tell her?

16 DR. PELLEGRINO: "Heavier than last time."

17 MR. BECK: Okay. Well, this is the same
18 time.

19 DR. PELLEGRINO: Oh, is it?

20 MR. BECK: But I see what you're saying.
21 Are you going to tell her it snowed?

22 DR. PELLEGRINO: Yes.

23 MR. BECK: It snowed, but you didn't see it
24 snow; right?

25 DR. PELLEGRINO: Correct.

1 MR. BECK: Now, do you understand that
2 distinction in direct and circumstantial evidence?

3 DR. PELLEGRINO: Yes.

4 MR. BECK: Seeing it snowing versus waking
5 up to our Las Cruces winter wonderland?

6 DR. PELLEGRINO: Yes.

7 MR. BECK: Is there anyone who doesn't see
8 that distinction?

9 Thank you, Ms. Pellegrino.

10 Does everyone see that circumstantial
11 evidence, a lot of the things I talked about with
12 Mr. -- I want to say McIntosh. I feel bad. It's
13 McKinzie. I'm sorry, Mr. McKinzie.

14 Is there anyone who doesn't understand that
15 distinction on direct and circumstantial evidence?
16 Okay. And if the judge instructs you that you, as
17 jurors, are to give equal weight, the same weight, to
18 direct and circumstantial evidence, can everyone
19 follow that direction? Is there anyone who can't
20 follow that direction? Raise your hand.

21 Sure, Ms. Griego?

22 MS. GRIEGO: So in your hypothetical, you
23 said, "One night I saw it snow, so I know it snowed."
24 That's direct. "The next morning I get up and it
25 snowed." I didn't see it, so you said the news

1 person said the day before it was going to be 60
2 percent chance. It may have snowed the day before,
3 it may have snowed after. My question really is:
4 Would the judge ask us to give those the same weight?
5 Because in the second scenario, we really don't know
6 when it snowed. It may have snowed the day the
7 weather person said it did, it was supposed to. It
8 may have snowed the next day. With circumstantial
9 evidence, I just see where -- I don't see how it
10 could ever have the same weight as direct evidence.

11 MR. BECK: Sure.

12 MS. GRIEGO: I just didn't understand how
13 that could be.

14 MR. BECK: And so my question with Ms.
15 Pellegrino over there -- and maybe it was a bad
16 question on my part -- but my question was: Her
17 friend called from dental school at Missouri, Kansas
18 City, and asked her, "How was the weather last
19 night?"

20 So she said it was snowing, because --
21 right? -- she got home and it hadn't snow in the
22 second hypothetical. And then she woke up the next
23 morning and it was the winter wonderland, dusting on
24 the rocks; right?

25 MS. GRIEGO: She could see it had snowed.

1 I was just confused on circumstantial and direct
2 given the same weight. Maybe in that circumstance
3 with the snow I can see it, because you obviously
4 have snow on the ground, either way.

5 But like in your first scenario, you said
6 the policeman seeing the purple car outside of the
7 bank. In a way, wouldn't that be kind of
8 circumstantial? Because you could have had the
9 person in the purple car there because they were
10 going to the bank, or they were going somewhere else
11 near the bank.

12 MR. BECK: Yes, exactly. And I just want
13 you to know you're finding your way onto an
14 eight-week jury here, asking these great questions.
15 But do you see how -- I agree with you, that is
16 circumstantial evidence that the car was there.

17 MS. GRIEGO: Yeah.

18 MR. BECK: But is that helpful to you in
19 corroborating Ms. Williams' testimony that she and I
20 talked about the plan and that she got Ms. Scifres to
21 drive the car there? Is that helpful for you?

22 MS. GRIEGO: It is. But if the judge told
23 me to give it the same weight as the police officer's
24 testimony on the guy who dropped the bag of money
25 because the money is right there and he was holding

1 it and that seems to be more direct, I know for a
2 fact that that happened because it's on the camera
3 and everything; where the other evidence is, yes, the
4 car was there, but we can't -- there is no visual
5 proof or direct proof of why the car was there.

6 MR. BECK: Sure. And I think you're
7 getting to a distinction -- and tell me if I'm wrong;
8 this is what I'm hearing from you, but please tell me
9 if I'm wrong, because I am more often than not. But
10 it sounds to me like you're getting to the
11 distinction in circumstantial versus direct evidence,
12 as opposed to the weight that you're going to give
13 them. And so --

14 MS. GRIEGO: Well, the weight is the thing
15 I'm concerned -- because to me I see direct as yeah,
16 that's heavy. I mean, we've got a video of you doing
17 this, and that's pretty heavy. But circumstantial is
18 not as heavy. So if you say the judge would tell me
19 to see them as the same, and give them the same
20 amount of weight, I'm not sure I could do that,
21 because, to me, logically that doesn't make sense.

22 MR. BECK: Sure. What I'm saying, is I
23 think finding Mr. Kennedy trying to pick up his money
24 is way better evidence -- I'm going to agree with you
25 here -- is way better evidence he just robbed a bank

1 than a 1992 Ford Fiesta sitting dead in the driveway,
2 even if it's neon purple; right?

3 MS. GRIEGO: Yeah.

4 MR. BECK: So you see how those two have
5 different -- that's why they're circumstantial and
6 maybe direct. It's circumstantial that he just
7 robbed a bank. He could have just had a pile of cash
8 on the floor because he's really, really rich, and
9 withdrew that money. But you have other facts that
10 tell you different; right?

11 MS. GRIEGO: They forgot to turn the
12 cameras off, so there must be a video of him exiting
13 with the case.

14 MR. BECK: Right. And that would be the
15 direct evidence. But do you see that if the judge
16 instructs you that those two are to be given the same
17 weight, the video camera and him picking up money,
18 that they're to be given the same weight, that you
19 take them with the same weight. But you may find
20 one -- you may find one shows you more, in reaching
21 your verdict. Does that make sense? That's a bad
22 way to say it.

23 MR. SINDEL: Your Honor --

24 MS. GRIEGO: That does make sense.

25 THE COURT: Well, let's do this: We need

1 to bring this to an end. The jury is going to
2 determine what the weight of the evidence is.

3 MR. SINDEL: Exactly.

4 THE COURT: You can consider circumstantial
5 evidence, you can consider direct evidence. You can
6 consider both of them. But the jury is going to
7 consider the weight. I'm not going to tell you to
8 weigh evidence the same. You can give it the weight
9 you want. Does that make sense?

10 All right. Are you about to wrap up, Mr.
11 Beck?

12 MR. BECK: Yes, Your Honor.

13 And I didn't mean to confuse you. I'm
14 sorry about that.

15 The last thing I'm going to talk about is
16 law enforcement and the CSI effect. Has everyone
17 seen CSI or NCIS, those type of crime scene shows? I
18 just learned they play, like, 117 times per week.
19 But it's an hour show, someone commits a crime, you
20 watch what happens, and at the end of the show, there
21 is some awesome computer forensic analysis that tells
22 us it was Colonel Mustard in the library with the
23 match stick; right? Does anyone think that that's a
24 real depiction of crime in real life? Raise your
25 hand. Good.

1 Does everyone understand that there are
2 certain things that maybe we want to put resources
3 into and don't want to put resources into?

4 And let me say this. Mr. Montoya, do you
5 understand that maybe law enforcement, just like
6 anyone else, has to make certain choices about where
7 they put their resources?

8 MR. MONTOKA: Right.

9 MR. BECK: Do you understand that?

10 MR. MONTOKA: Yes, I do.

11 MR. BECK: So if at the end of this
12 trial -- if you're selected to be on the jury, and at
13 the end of this trial, for one reason or another, you
14 don't have every single piece of evidence that you
15 wanted to see. For instance, for some reason, we
16 don't have the camera video of Mr. Kennedy robbing a
17 bank, even though Mr. Kulpa forgot to turn off the
18 security camera.

19 Even if we don't have that piece of
20 evidence, we don't have that video evidence, if there
21 is a question that you had wanted to ask, a piece of
22 evidence that you wanted to see, but you still
23 determined that I was guilty beyond a reasonable
24 doubt, could you, in fact, find me guilty beyond a
25 reasonable doubt, even though we don't have that

1 piece of evidence?

2 MR. MONTTOYA: So I was already -- you
3 already proved that it was beyond a reasonable doubt?

4 MR. BECK: Right. According to you.

5 MR. MONTTOYA: According to me? Yeah.

6 MR. BECK: Okay. Good.

7 MR. MONTTOYA: Beyond a reasonable doubt.

8 MR. BECK: Perfect. Thank you, Mr.
9 Montoya.

10 Is there anyone who disagrees with Mr.
11 Montoya, that even though you all found me guilty
12 beyond a reasonable doubt, found that I was involved,
13 but you really wanted to see that security video
14 evidence, is there anyone who is saying at the end of
15 this trial if you don't have that key piece of
16 evidence, even though you found I was guilty beyond a
17 reasonable doubt, is there anyone who couldn't
18 convict me of guilty? Raise your hand.

19 All right. Thank you all for your
20 attention. Thank you for your patience.

21 THE COURT: All right. Thank you, Mr.
22 Beck.

23 All right. Let's go ahead and take our
24 lunch. We'll be in recess for about an hour. See
25 you after lunch. When you come back, stay outside

1 the courtroom. We'll come get you when we're ready
2 for you. Take your belongings with you.

3 (The venire panel left the courtroom.)

4 THE COURT: All right, and after lunch
5 you're going to pick up, Mr. Cooper? You're going
6 first?

7 MR. COOPER: Yes, Your Honor.

8 THE COURT: All right. See you in about an
9 hour.

10 (The Court stood in recess.)

11 THE COURT: All right. We're about to
12 bring them in. They've had some trouble getting
13 served at the restaurant, and they're at the metal
14 detectors. We're missing about three, so if y'all
15 want to get seated. Ms. Wild is checking out the end
16 of the rows there, seeing if everything looks good.

17 Everybody about ready to go?

18 (The venire panel entered the courtroom.)

19 If you'll take your places, ladies and
20 gentlemen, back in the seats that you've maintained
21 over the last couple of days, I appreciate it very
22 much. I hope everybody had a good lunch. Everything
23 was slower than everybody would like. My wife
24 actually packed me a lunch today.

25 I appreciate everybody being back. I hope

1 you had a good lunch.

2 Mr. Cooper, do you have some additional
3 voir dire examination on behalf of Mr. Billy Garcia?

4 MR. COOPER: I do, Your Honor.

5 THE COURT: Mr. Cooper.

6 MR. COOPER: May it please the Court.

7 THE COURT: Mr. Cooper.

8 MR. COOPER: Gentlemen, counsel, ladies and
9 gentlemen of the jury, as the judge told you, my name
10 is Bob Cooper. Together with Jim Castle, we
11 represent Billy Garcia. Billy is seated here in the
12 front row. And Billy is charged with a number of
13 offenses. We're going to be here for the next eight
14 weeks.

15 And today what we want to do is try to
16 select a jury, a jury that can be fair and impartial,
17 a jury that can listen to all of the evidence that
18 will come from this witness stand up here. People
19 are going to walk in. The Government listed 150
20 witnesses. They're going to walk in to that witness
21 chair and raise their hands and swear to tell the
22 truth.

23 And we're going to have jurors sitting up
24 in the jury box trying to determine whether or not
25 they are telling the truth. And so what we want to

1 do today -- and I'm speaking on behalf of my client,
2 Billy Garcia, but what I say is applicable to all of
3 the defendants, the other six individuals who are
4 being charged with these offenses.

5 Now, I'm going to ask you a bunch of
6 questions, just like Judge Browning did, just like
7 Mr. Beck did. And I'm not trying to embarrass you,
8 I'm not trying to offend you, but we have to find a
9 group of jurors that can be fair and impartial.

10 Now a person's attitudes and feelings are
11 shaped by our experiences in life. Some of us grew
12 up in Hobbs, some of us grew up in Santa Fe. Some of
13 us grew up on the east coast. We all live in New
14 Mexico today. And given where we've grown up and
15 what we've done in our lives, we have different
16 feelings, we've had different experiences that make
17 us feel one way or another about certain things,
18 certain people, certain places.

19 THE REPORTER: They're raising their hands.
20 They can't hear you.

21 MR. COOPER: Billy told me not to start. I
22 was walking around. But as I walk, I'm going to take
23 my microphone. Can you hear me now, everybody?

24 JURY PANEL MEMBER: Yes.

25 MR. COOPER: I shouldn't sing? No, okay.

1 So, ladies and gentlemen, again, our
2 attitudes, our feelings, our impressions are shaped
3 by our experiences. Every one of us has a different
4 experience in life. And that's what I think is going
5 to make for 12 really, really good jurors, is that
6 diversity in our life experiences. Those life
7 experiences cause us all to lean one way or another.
8 You know what? That's okay. That's good. There is
9 nothing wrong with leaning one way or another.

10 With apologies to Mr. DeVargas, I have to
11 make a confession.

12 MR. DeVARGAS: Okay.

13 MR. COOPER: When I was a young man, I
14 didn't like banks. I didn't like them at all.

15 MR. DeVARGAS: I get that a lot.

16 MR. COOPER: I bet you do. Mr. Kimmick
17 doesn't like one particular bank right now. And it
18 seemed like when I was growing up, the banks could
19 never keep my balance right. Do you have customers
20 that feel that way?

21 MR. DeVARGAS: All of them feel that way.

22 MR. COOPER: Yeah. I mean, they were
23 always taking a little more money for those service
24 charges than I thought they should, and at the end of
25 the month, they couldn't balance my account. So if a

1 banker were on trial, I don't think that I could give
2 that bank a fair trial, because I tended to lean one
3 way or another against the banks because I didn't
4 like banks. But that's okay. That's who I was.
5 Those were my experiences in life.

6 You all have similar experiences. Probably
7 not banks, although some of you may. Not your bank.
8 But I'm okay with banks today. My son is a
9 commercial banker. I think he calls himself a
10 relationship manager. That's the new term for those
11 sorts of things. But he's a commercial banker at a
12 big bank, and he makes big loans. So I have to like
13 at least that banker. But I'm okay with banks now,
14 but there was a time in my life that I wasn't.

15 So today I want to explore with you what
16 causes you to lean one way or another with regard to
17 some of the issues that we're going to be dealing
18 with in this trial. These issues, ladies and
19 gentlemen -- you've heard a little bit about them.
20 These issues revolve around gangs, a Hispanic gang
21 for one. So I remember one of you -- and I'm going
22 to talk a little later about how somebody was
23 offended by some questions in the questionnaire,
24 about the discussion of race. We can't avoid it.

25 In this case, this was a Hispanic gang,

1 Syndicato de Nuevo Mexico. I'm Hispanic, and I
2 didn't say that very well. But it's out there. We
3 have to talk about it. This gang had problems with
4 black gangs, with white gangs, they had problems with
5 snitches, they had problems with sex offenders, they
6 had problems with homosexuals. These guys, given who
7 they were and the experiences that they had in
8 prison, caused them to lean one way or another, just
9 like the rest of us. No different than everybody
10 else.

11 And so I think we have to talk about race.
12 We have to talk about gangs. We have to talk about
13 drugs. There's going to be a lot, a lot, a lot of
14 evidence about drugs. Ladies and gentlemen, we're
15 going to talk about four murders. We're going to
16 talk about some photographs that are very, very
17 gruesome. We're going to talk about some photographs
18 that I'm sure none of us want to look at.

19 We're going to see people who were
20 strangled to death with the cord still wrapped around
21 the neck. We're going to see a burned body after a
22 gentleman was killed. And this did not occur in the
23 prison. It occurred outside of the prison. But
24 after the man died, his body was burned. And so
25 you're going to see those photographs, as well.

1 So we have to talk about that. Because if
2 you're not comfortable talking about Hispanics, if
3 you're not talking about prison gangs, if you're not
4 talking about drugs, you're not comfortable talking
5 about that, if you're not comfortable listening to
6 that sort of evidence, you're probably better suited
7 to a different jury panel. And that's okay. That's
8 all right.

9 Some of you have job experiences that
10 perhaps you shouldn't be sitting on this particular
11 jury. Some of you have worked in places where you
12 have a natural bias. But that's okay. That's good.
13 All we want you to do is tell us about those biases.

14 We all have them. I have others that are
15 probably more relevant to other matters, other than
16 my bank bias. But we all do, you know.

17 Some of you may not like the fact that I
18 grew up in Santa Fe. Maybe you don't like northern
19 New Mexico people. I was born in Deming, though,
20 just in case. I went to school in Portales, so I've
21 got it all covered; right?

22 But seriously, all of us have leanings one
23 way or another, and I just want to explore that with
24 you.

25 But before we get to any specific questions

1 that I might have, I'd like to talk about presumption
2 of innocence, burden of proof, and reasonable doubt.
3 As all these guys sit here, they're presumed to be
4 innocent. And over the last day and a half, all of
5 you heard a lot of questions about presumption of
6 innocence; right, Mr. Telles?

7 MR. TELLES: That's correct.

8 MR. COOPER: And you agree that everybody
9 accused of these crimes in this room, they're
10 presumed to be innocent; correct?

11 MR. TELLES: That's correct.

12 MR. COOPER: You have no problem with that?

13 MR. TELLES: I do not.

14 MR. COOPER: Ms. Lee, you're good with
15 that?

16 MS. LEE: I'm good with that.

17 MR. COOPER: Absolutely right?

18 MS. LEE: Yes.

19 MR. COOPER: If we lived in another
20 country, in a different part of the world, that
21 wouldn't be the rule, would it? It wouldn't. We're
22 lucky that we live in the United States where we are
23 presumed innocent.

24 Presumption of innocence. What does that
25 mean, Dr. Marquardt? I'd like for you to assume for

1 a minute that your wife calls you from jail and she
2 tells you that she's been accused of a Circle K
3 robbery, convenience store. I don't know if Roswell
4 has Circle Ks. No, they have Allsup's down in
5 Roswell.

6 So your wife is accused of walking into an
7 Allsup's and robbing the Allsup's. What's your
8 reaction going to be?

9 DR. MARQUARDT: Shock.

10 MR. COOPER: You're going to be shocked,
11 absolutely shocked. You're going to say, "No way, no
12 how"; right?

13 DR. MARQUARDT: Yes, sir.

14 MR. COOPER: You're going to reject that
15 accusation. You're going to say, "No, absolutely
16 not. My wife could not have done that."

17 And she's going to sit in jail? Maybe
18 there is no bond. And you're going to continue to
19 reject that accusation, aren't you? You're going to
20 reject? No? Are you going to say, "Okay, maybe she
21 did it"?

22 DR. MARQUARDT: No, I'm going to reject the
23 accusation, but --

24 MR. COOPER: Because she's presumed --

25 DR. MARQUARDT: But she is still presumed

1 innocent. She is presumed innocent.

2 MR. COOPER: And you're going to demand
3 that the people that sit at this table prove to you
4 and the world beyond a reasonable doubt. You're
5 going to demand that they show you bit by bit, piece
6 by piece, that your wife did that robbery; right?

7 DR. MARQUARDT: Yes.

8 MR. COOPER: And if they can't do it, then
9 what happens?

10 DR. MARQUARDT: She's not guilty.

11 MR. COOPER: Absolutely. So Dr. Marquardt,
12 do you have that same feeling today about my client
13 Billy Garcia?

14 DR. MARQUARDT: Yes, sir, I do.

15 MR. COOPER: And you're going to reject
16 that accusation, aren't you? The accusation that he
17 has participated in a couple of homicides?

18 DR. MARQUARDT: Yes, sir.

19 MR. COOPER: And you're going to say, "No
20 way, no how," not until these people that sit at this
21 table can prove beyond a reasonable doubt that he did
22 it; right?

23 DR. MARQUARDT: Right.

24 MR. COOPER: And you're going to continue
25 to reject that accusation, to refuse it, until they

1 can show you bit by bit, piece by piece, that he did
2 it; right?

3 DR. MARQUARDT: Yes, sir.

4 MR. COOPER: And you're going to hold that
5 presumption of innocence for my client, Billy, and
6 for Allen, for Andrew, Arturo and Joe, Edward and
7 Chris. Yeah, Chris, too; right? You're going to
8 hold that presumption -- you're going to hold that
9 presumption for them just as long and just as tight
10 and just as hard as you would for your wife; right?

11 DR. MARQUARDT: Yes, sir.

12 MR. COOPER: Mr. Zink, how about you? Are
13 you going to maintain that presumption for these
14 folks as long as -- or for as long as perhaps
15 Dr. Marquardt would for his wife?

16 MR. ZINK: Yes, I would.

17 MR. COOPER: Is that appropriate?

18 MR. ZINK: To assume that they're innocent
19 until proven guilty.

20 MR. COOPER: Yes?

21 MR. ZINK: Yes, absolutely.

22 MR. COOPER: In fact, you have to do it,
23 don't you?

24 MR. ZINK: Yes. I hope she gets out of
25 jail.

1 MR. COOPER: We all come into courtrooms
2 just like this. And we expect justice to be done;
3 right? Does everybody agree that in courtrooms all
4 across the country, we hope that justice is done?

5 JURY PANEL MEMBER: Yes.

6 MR. COOPER: I see a lot of people shaking
7 their head in the affirmative yes, okay.

8 Now, justice can come in many forms, ladies
9 and gentlemen. Mr. Lopez, if the Government in some
10 case can prove beyond a reasonable doubt, beyond a
11 reasonable doubt with any -- sorry. If the
12 Government can prove beyond a reasonable doubt that
13 somebody did what they say they did, and you return a
14 verdict of guilty, people may say that the jury has
15 done justice; right?

16 MR. LOPEZ: Yes, that would be true.

17 MR. COOPER: Isn't it also true that if the
18 people who sit at this table, the United States
19 Government, if they cannot prove beyond a reasonable
20 doubt that somebody did what they say they did and
21 you return a verdict of not guilty, you also have
22 done justice, haven't you?

23 MR. LOPEZ: That would be justice also.

24 MR. COOPER: So doing justice is not just
25 finding somebody guilty; right?

1 MR. LOPEZ: That is correct.

2 MR. COOPER: Ms. Solis, do you agree?

3 MS. SOLIS: Yes.

4 MR. COOPER: So we can do justice by
5 finding somebody not guilty if the Government hasn't
6 met their burden. If they haven't done what they're
7 supposed to do, then you return a verdict of not
8 guilty, you're doing justice; right?

9 MS. SOLIS: Yes.

10 MR. COOPER: And you're doing what the law
11 requires you to do; right?

12 MS. SOLIS: That's correct.

13 MR. COOPER: Are you okay with that?

14 MS. SOLIS: I would say so, yes.

15 MR. COOPER: Ms. Duncan, same question. If
16 you returned a verdict of not guilty because the
17 Government can't prove beyond a reasonable doubt that
18 my client did what they say he did, are you doing
19 justice?

20 MS. DUNCAN: Of course.

21 MR. COOPER: Are you okay with that?

22 MS. DUNCAN: Yes, justice swings both ways.

23 MR. COOPER: Exactly. Doing justice is not
24 all about convicting somebody.

25 The Government has filed -- the Government

1 has presented the case to a grand jury, and they've
2 indicted these individuals, but it's just a piece of
3 paper. It doesn't mean that they did anything.

4 A little later, I think somebody else is
5 going to talk about the process of coming up with
6 this indictment. But it's just a piece of paper.
7 It's an allegation. And it's an allegation that
8 carries no more weight than the allegation that says
9 that Ms. Marquardt committed the Allsup's robbery.
10 And you give this indictment the same weight that
11 Dr. Marquardt gives the allegation with regard to his
12 wife. Is everybody good with that?

13 Mr. Medina, are you okay with that?

14 MR. MEDINA: Yes, sir.

15 MR. COOPER: Now, every day, all across
16 this country, people walk out of courtrooms after
17 having voted not guilty. But that's okay, isn't it?
18 I mean, aren't they doing their job?

19 Ms. Pellegrino, would you agree that
20 they're doing their job?

21 DR. PELLEGRINO: I would.

22 MR. COOPER: And those jurors are doing
23 nothing but following the law and doing what they're
24 supposed to do; right?

25 DR. PELLEGRINO: Correct.

1 MR. COOPER: Just before we broke for
2 lunch, I stood up and I read a list of names of 76
3 individuals that the defense may call. Mr. Kennedy?

4 MR. KENNEDY: Yes.

5 MR. COOPER: What if we don't call any of
6 those witnesses? How are you going to feel?

7 MR. KENNEDY: I assume you didn't need them
8 to defend the Government's accusations.

9 MR. COOPER: You almost said "prove,"
10 didn't you?

11 MR. KENNEDY: Almost did.

12 MR. COOPER: Gotcha.

13 MR. KENNEDY: Yes.

14 MR. COOPER: Okay. That's right. But we
15 don't need to prove anything; right?

16 MR. KENNEDY: Correct.

17 MR. COOPER: Who proves?

18 MR. KENNEDY: The Government has to prove.

19 MR. COOPER: The people that sit at that
20 table. Not us.

21 MR. KENNEDY: Right.

22 MR. COOPER: So we don't have to call a
23 single solitary witness; right?

24 MR. KENNEDY: Absolutely.

25 MR. COOPER: If at the end of the trial I

1 meet you out on the courthouse steps, you're not
2 going to complain to me, Mr. Cooper, you should have
3 called some witnesses?

4 MR. KENNEDY: Absolutely not.

5 MR. COOPER: Because you know we have no
6 duty to do so; right?

7 MR. KENNEDY: That is correct.

8 MR. COOPER: We have listed 76. We're not
9 going to call anywhere close to those. Some of those
10 are on the Government's witness list. The Government
11 has 150 people on their witness list. That's okay.

12 Why, Ms. Cardiel Griego, Ms. Cardiel
13 Griego, why do you think they have so many people on
14 their witness list?

15 MS. CARDIEL GRIEGO: I'm not sure.

16 MR. COOPER: Okay. Do you think it's
17 because they have --

18 MS. CARDIEL GRIEGO: I can't do it.

19 MR. COOPER: You can't do it?

20 MS. CARDIEL GRIEGO: Not in front of --

21 MR. COOPER: Okay. Let's pass it on to --
22 in a minute, we'll ask to approach the bench. Okay?
23 Thank you.

24 Mr. Carrillo, can you grab the microphone,
25 please? So the Government has the burden of proving

1 beyond a reasonable doubt that these guys did what
2 they say that they did; right?

3 MR. CARRILLO: Right.

4 MR. COOPER: And you're good with that,
5 yeah?

6 MR. CARRILLO: Yes.

7 MR. COOPER: Do you think that's too heavy
8 of a burden for them?

9 MR. CARRILLO: I guess so.

10 MR. COOPER: You think it's too heavy of a
11 burden for the Government? You think that they
12 shouldn't have to prove beyond a reasonable doubt?

13 MR. CARRILLO: No, they should show
14 reasonable doubt.

15 MR. COOPER: They should try to prove it
16 beyond a reasonable doubt, and if they can't, what
17 happens?

18 MR. CARRILLO: Then not guilty.

19 MR. COOPER: Are you okay with that?

20 MR. CARRILLO: Yeah.

21 MR. COOPER: And they have to call
22 witnesses to try to prove that on such-and-such a
23 date Billy did this thing, and on another date Edward
24 may have done that, and Chris -- I'm not going to
25 forget Chris this time -- Chris did something on some

1 other date. They have to prove that. We don't;
2 right?

3 MR. CARRILLO: Yeah.

4 MR. COOPER: And would you hand it to Mr.
5 Kimmick, please?

6 Mr. Kimmick and Ms. Campbell, you're next.
7 I saw you laughing. So it's okay for the Government
8 to have this heavy of a burden?

9 MR. KIMMICK: They should have that heavy
10 of a burden.

11 MR. COOPER: Why is that?

12 MR. KIMMICK: Because any evidence that you
13 present against anybody should be so far beyond
14 question, when you're in the law enforcement
15 profession, to where they are going to be able to do
16 their job because they legally acquired the evidence
17 and they properly used it. It is entirely up to the
18 Government to prove without a reasonable doubt
19 whatsoever that the person they accuse of committing
20 a crime did indeed do that.

21 MR. COOPER: And if they can't do that,
22 what happens?

23 MR. KIMMICK: Then they don't get another
24 shot at it, because people they are accusing will be
25 found not guilty, if there is a shadow of a doubt

1 inside of somebody's mind of their guilt or innocence
2 on the crime allegedly committed.

3 MR. COOPER: Okay. And that happens
4 whether it's a speeding ticket or a murder charge;
5 right?

6 MR. KIMMICK: Right.

7 MR. COOPER: And just because the charge is
8 more serious today in this courtroom than it would be
9 across the street at municipal court matters not one
10 little bit, does it?

11 MR. KIMMICK: Not at all.

12 MR. COOPER: I misspoke. It wasn't Ms.
13 Campbell. It was Ms. McKee. She gets the
14 microphone.

15 Do you think that their evidence needs to
16 be credible?

17 MS. McKEE: Yes.

18 MR. COOPER: And just because they have a
19 confidential informant that walks up to this witness
20 stand, stands here, raises his hand and says, "I
21 swear to tell the truth," do you think it's
22 necessarily the truth?

23 MS. McKEE: Not necessarily.

24 MR. COOPER: Okay. So just because they
25 come into court and testify doesn't mean that the

1 Government has met their burden; right?

2 MS. McKEE: Correct, it does not.

3 MR. COOPER: Okay. Because cooperators can
4 lie; correct?

5 MS. McKEE: Right.

6 MR. COOPER: Cooperators are no different
7 than anybody else. We're all human, we can all lie;
8 right?

9 MS. McKEE: Yes.

10 MR. COOPER: Thank you.

11 Mr. Troy, I'm going to get you a
12 microphone. I've got your questionnaire here and I'd
13 like to ask you a couple of questions. There was a
14 series of questions about a gang member's
15 responsibility. I'll actually hand it to you.
16 You've got to put your glasses on.

17 Both of you are younger than me. Except
18 one guy in the courtroom, I think I'm the oldest.
19 Okay, maybe three.

20 Do you remember those questions, 66 through
21 68?

22 MR. TROY: I believe I do.

23 MR. COOPER: Is that your questionnaire?

24 MR. TROY: Um-hum.

25 MR. COOPER: May I see it for a second?

1 MR. TROY: Yes.

2 MR. COOPER: This was one question that was
3 asked of all of you, and it reads: "A gang leader
4 should be held responsible for the criminal acts
5 committed by its gang members." But that's not
6 necessarily true unless that gang leader did
7 something to help commit the act that was committed;
8 right? Or is that gang leader, just because he's a
9 leader, responsible for everything?

10 MR. TROY: Let me gather my thoughts. I
11 don't know. It's -- when I first read the question,
12 even now, it's kind of similar to what the other
13 example was; there was a mastermind behind it and
14 there was evidence, then --

15 MR. COOPER: There has to be evidence --

16 MR. TROY: Correct.

17 MR. COOPER: -- that Mr. Beck walked over
18 here with his co-conspirators, said, "Hey, let's go
19 rob this bank. We're going to make a lot of bank --
20 we're going to put money in my pocket. You guys do
21 all the work, I'll get 50 percent and you get 50
22 percent." But he did something to make that happen,
23 didn't he?

24 MR. TROY: Correct.

25 MR. COOPER: So if the leader doesn't do

1 anything, is he still held responsible?

2 MR. TROY: No.

3 MR. COOPER: Doesn't make sense, does it?

4 MR. TROY: No.

5 MR. COOPER: So I know you're a member of
6 La Tierra Sagrada Society, and you live in
7 Albuquerque. Let's assume for a minute that you,
8 instead of giving the medical school money, you're
9 giving the Department of Athletics money, and you
10 decide to join the Lobo Club, and eventually you
11 become the president of the Lobo Club. You're the
12 president, and some members of that club decide
13 they're going to raise some money, they're going to
14 go out and solicit funds from a number of people
15 supposedly in support of Lobo athletics, and they
16 decide to take that money and run. They embezzle it.
17 You're the president. You didn't know anything about
18 it. You're not going down for that, are you?

19 MR. TROY: No.

20 MR. COOPER: You're going to hire a good
21 lawyer; right?

22 MR. TROY: Oxymoron.

23 MR. COOPER: Seriously, you didn't have
24 anything to do with that scheme?

25 MR. TROY: No.

1 MR. COOPER: So it doesn't make sense that
2 you should be held responsible for that; right?

3 MR. TROY: I agree.

4 MR. COOPER: Now, a number of you answered,
5 just like Mr. Troy, that they should be held -- gang
6 leaders should be held responsible for the actions of
7 gang members. Does anybody -- after hearing this
8 discussion, do you still think that they should be
9 held responsible of actions of members of the gang if
10 they didn't know what was happening?

11 Yes, ma'am. Time out. I have to get you a
12 microphone.

13 MS. VAZQUEZ: I think after hearing it in
14 that context, like you're putting it, I agree with
15 that. But it comes down to the evidence. If there
16 is evidence proving that that individual set it all
17 in motion, then maybe that's where that comes down to
18 it. But like you were asking him, I mean, if he
19 didn't set that in motion and there is no evidence of
20 it, then he didn't do it.

21 MR. COOPER: Mr. Beck absolutely set in
22 motion the robbery, didn't he?

23 MS. VAZQUEZ: Um-hum.

24 MR. COOPER: So he should face some
25 consequences.

1 Mr. Troy, Ms. Griego, thank you.

2 MS. GRIEGO: I do agree somewhat with the
3 concept of what you're saying, but at the same time,
4 you're talking about him being a member of the Lobo
5 basketball club and a gang like MS-13. I definitely
6 see a difference between that. If he were accused of
7 embezzlement or his people embezzled money from a
8 basketball club, I would be more inclined to see that
9 he does not need to pay for the actions of his
10 members. But if you -- and I'm using MS-13 just off
11 the top of my head. The leader of that particular
12 gang, I'm not so sure, because its purpose is not
13 like the Lobo basketball team's purpose. Does that
14 make sense?

15 MR. COOPER: It does. Anybody else here in
16 the box? Mr. McKinzie?

17 MR. MCKINZIE: I agree with her. I don't
18 associate the president of the Lobo Club with the
19 head of a gang member or the gang, when the purpose
20 of the gang is to be involved in criminal activity.
21 So who would it be initiating the criminal activities
22 except for the leader of the gang? So I do have a
23 hard time with you equating one to the other, because
24 one -- I've never seen a mission statement from a
25 gang, but I don't think it's community service on

1 Saturdays and bowling on Fridays.

2 MR. COOPER: Okay. If the jury
3 instructions tell you that the leader of the gang has
4 to do some affirmative act to make things happen,
5 then what's your position?

6 MR. McKINZIE: Well, you'll have to make
7 the connection and prove to me that it was an issue.
8 I do understand. I have a built-in bias that the
9 head of a gang probably is guilty. But yes, in this
10 situation the Government has to prove to me the
11 evidence that leads to that conclusion.

12 MR. COOPER: Okay. And I appreciate you
13 sharing that built-in bias with me. Ms. Griego, same
14 with you. Because that's what we're looking for here
15 today. All of the lawyers over here are looking to
16 determine whether or not we have those biases.

17 Anybody else? Mr. Donart?

18 MR. DONART: I guess I would say that the
19 leader has a responsibility for its organization,
20 whether it's the Lobo Club or the gang, but not
21 necessarily criminal responsibility for an act that
22 you're unaware of. The responsibility legally would
23 come in if they did know about an act and didn't
24 report, whether it's the Lobo Club or not.

25 MR. COOPER: Okay. Thank you.

1 Mr. Troy, I saw you had a son-in-law that
2 worked at a prison or jail from 2000 to 2002? That
3 time period?

4 MR. TROY: It was 1998 to 2000.

5 MR. COOPER: The question was very broad.

6 MR. TROY: Right.

7 MR. COOPER: I couldn't tell if it was a
8 jail or a prison facility.

9 MR. TROY: It's the correction facility in
10 Santa Fe.

11 MR. COOPER: Okay. Is he still so
12 employed?

13 MR. TROY: No.

14 MR. COOPER: Did you ever talk with him
15 about his job and what was going on in Santa Fe in
16 1998 to 2000?

17 MR. TROY: Nothing during the time period.
18 Just what he was trained in through the years.

19 MR. COOPER: And what did he do there?

20 MR. TROY: He was trained in a lot of
21 different --

22 MR. COOPER: Was he a corrections officer?

23 MR. TROY: Yes.

24 MR. COOPER: Thank you.

25 Mr. Montoya, let's go back to witnesses

1 that may be called in this case. If Mr. Castle and I
2 call three witnesses and they call 150, are you going
3 to say their 150 beat my three?

4 MR. MONTTOYA: No.

5 MR. COOPER: Why is that?

6 MR. MONTTOYA: Everyone is equal. It's
7 their job to prove to me beyond a reasonable doubt.
8 Just because they have more doesn't mean anything.
9 It's all up to the evidence.

10 MR. COOPER: Are you going to think I'm a
11 crummy lawyer because I don't call another hundred to
12 equal them?

13 MR. MONTTOYA: Not at all.

14 MR. COOPER: And you know it's not a matter
15 of weight of the witnesses. You know, at the end of
16 the day when you go back into the jury room, you're
17 not going to say, "They called this many, they called
18 this many, they outweigh."

19 MR. MONTTOYA: The numbers don't matter.
20 It's the evidence that's involved.

21 MR. COOPER: That's right. And they have
22 to prove beyond a reasonable doubt --

23 MR. MONTTOYA: That's absolutely correct.

24 MR. COOPER: Okay. Would you pass, please,
25 to Ms. Riley?

1 So if, after 150 witnesses come into the
2 courtroom, they come up here and they tell their
3 story, you have to go back in the jury room, as
4 you're walking back in the jury room, they're still
5 presumed innocent; right?

6 MS. RILEY: Yes.

7 MR. COOPER: They're presumed innocent as
8 you walk back in. You get back into the jury room,
9 everybody is going to sit down, probably go to the
10 bathroom first, and then come back out. Us old guys,
11 anyway. But you're then going to start talking about
12 the case. You're going to start deliberating about
13 this case. And after you get down the road with your
14 deliberations, you think that Billy -- maybe he did
15 what they say? Is that enough? Have they -- if
16 after -- as you're deliberating, you think, yeah,
17 maybe Billy did it, is that proof beyond a reasonable
18 doubt?

19 MS. RILEY: No, is that a shadow of a
20 doubt?

21 MR. COOPER: It's not proof beyond a
22 reasonable doubt, is it? No way. If you think --
23 and let's pass it to back to Mr. Doom, please.

24 Mr. Doom, if you think Billy might have
25 done it, is that good enough?

1 MR. DOOM: No, sir.

2 MR. COOPER: Not even close, is it?

3 MR. DOOM: No, sir.

4 MR. COOPER: Let's -- if you will pass it
5 to Ms. Reser.

6 If you think that, if you have a feeling
7 that Billy did it, is that enough?

8 MS. RESER: No.

9 MR. COOPER: Have they met their burden?
10 Have they proved beyond a reasonable doubt?

11 MS. RESER: No.

12 MR. COOPER: They haven't, have they? And
13 if they haven't done it, what's your verdict?

14 MS. RESER: Not guilty.

15 MR. COOPER: Ms. Menapace, please. If you
16 think that perhaps Billy has done it, is that enough?

17 MS. MENAPACE-CORRAL: No, sir.

18 MR. COOPER: It's not, is it?

19 MS. MENAPACE-CORRAL: No.

20 MR. COOPER: How come?

21 MS. MENAPACE-CORRAL: Because the
22 Government has not proven that they are guilty.

23 MR. COOPER: They have to prove to you
24 beyond a reasonable doubt.

25 MS. MENAPACE-CORRAL: That's correct.

1 MR. COOPER: In all likelihood? It still
2 isn't enough, is it?

3 MS. MENAPACE-CORRAL: No.

4 MR. COOPER: If you think that he possibly
5 did it, is that enough?

6 MS. MENAPACE-CORRAL: It is not.

7 MR. COOPER: And if not -- if under any of
8 those scenarios that's how far you get, if that's
9 what you think, then the Government has failed to
10 prove beyond a reasonable doubt that Billy did it?

11 MS. MENAPACE-CORRAL: Yes.

12 MR. COOPER: And every time I mentioned
13 Billy, we can use Chris, we can use Allen, Arturo
14 Joe, Andrew. We can use anybody's name in there;
15 right?

16 MS. MENAPACE-CORRAL: Right.

17 MR. COOPER: We can use Dr. Marquardt's
18 wife.

19 MS. MENAPACE-CORRAL: Yes.

20 MR. COOPER: Okay. And Ms. Menapace, you
21 don't care if I don't call any witnesses, do you?

22 MS. MENAPACE-CORRAL: I do not.

23 MR. COOPER: And why not?

24 MS. MENAPACE-CORRAL: Because the
25 Government should be able to prove whether they are

1 guilty or not. You don't have to have anybody.

2 MR. COOPER: Okay. Would you pass it down
3 to Mr. Milne, please?

4 If I don't call 150 witnesses like the
5 Government, are you okay with that?

6 MR. MILNE: Yes, sir.

7 MR. COOPER: Why is that?

8 MR. MILNE: Again, like what she was
9 saying, they're the ones that are accusing them,
10 they're the ones that have to come up with the proof
11 to prove what they're saying they did.

12 MR. COOPER: Okay. Thank you. And if they
13 don't, what do you do?

14 MR. MILNE: If they don't convince me, then
15 they're not guilty.

16 MR. COOPER: Does it make a difference that
17 our clients are members of a prison gang when we talk
18 about presumption of innocence?

19 MR. MILNE: Negative.

20 MR. COOPER: I know that we ought to give
21 it to Dr. Marquardt's wife. She ought to enjoy that
22 presumption of innocence; right?

23 MR. MILNE: Yes, sir.

24 MR. COOPER: Is there any difference
25 between the presumption that we give her and the

1 presumption we give Billy?

2 MR. MILNE: No, I think we should all have
3 the same fair trial that we are convicted -- or not
4 convicted, but being accused of something.

5 MR. COOPER: Billy was not in prison at the
6 time. Well, let me back up. At the time he was
7 indicted, he was not in prison. He was out on the
8 streets. Would it have made any difference if he had
9 in prison?

10 MR. MILNE: No.

11 MR. COOPER: He'd still be --

12 MR. MILNE: I don't know the background of
13 a witness -- or not a witness, but --

14 MR. COOPER: Defendant?

15 MR. MILNE: A defendant. So it doesn't
16 really matter to me at that point what you can
17 convince me that he did.

18 MR. COOPER: You've got blinders on. You
19 can't see, and you shouldn't be able to tell that he
20 was an inmate in a prison. It shouldn't matter to
21 you in terms of the presumption of innocence and
22 whether or not the Government has to prove beyond a
23 reasonable doubt; right?

24 MR. MILNE: Right.

25 MR. COOPER: Okay. Everybody is good with

1 that.

2 I'd like to talk a little bit about
3 credibility of witnesses. How many here have heard
4 two different stories from two different people,
5 stories differ, and you have to try to decide who is
6 telling the truth? I mean, that's come across
7 probably everybody's daily life. So let's go back.

8 How about Ms. Trujillo -- Ms. Garcia. My
9 apologies, Ms. Garcia. And I have a chart.

10 So how do you decide who is telling the
11 truth, when you have two different stories and you
12 don't know? What do you do?

13 MS. GARCIA: I raised two boys, and I also
14 raised the child being "I don't know."

15 MR. COOPER: I know him very, very well.

16 MS. GARCIA: He's come back.

17 MR. COOPER: It was Doug?

18 MS. GARCIA: He's come back with my
19 granddaughters. I just had to ask a lot of
20 questions. I had to do a lot of listening. And
21 sometimes I never found out who did what. I just
22 couldn't ever get to the bottom of it. So at that
23 point in time, you know, you just lecture, let them
24 know it wasn't appropriate; I don't know who did it,
25 but if it happens again, you're both going to die.

1 MR. COOPER: That's fair. So when you have
2 two stories -- and let's assume for a minute that
3 they're both believable stories, Bobby or Doug. The
4 stories -- Bobby and Doug are telling stories to my
5 mom. My story is reasonable. But Doug tells his
6 story, too, and my mom doesn't know which to believe.

7 Sorry, Ms. Bean. Just one arm.

8 So I tell one story, my brother tells
9 another story, they're both reasonable stories, my
10 mom can't figure it out. And she probably then says
11 something much like what you told your boys, "Yeah,
12 I'll kill you both if it happens again." But what
13 you have in that case, would you agree with me, is a
14 reasonable doubt?

15 MS. GARCIA: It is a reasonable doubt, it
16 is.

17 MR. COOPER: So if you have two stories and
18 you don't know which one to believe --

19 MS. GARCIA: Reasonable doubt.

20 MR. COOPER: -- that's a reasonable doubt.

21 Ms. Cardenas, would you agree, that if you
22 have two stories and you can't figure out -- you
23 don't know which is true, and they're both
24 reasonable?

25 MS. CARDENAS: No, I would want to see any

1 type of evidence or -- depending on what it is, like,
2 is there proof behind one side of the story? Because
3 he-said-she-said or I would want to see some -- be
4 looking for some type of evidence, or something.

5 MR. COOPER: And would you look for other
6 things? And I think that's what Ms. Garcia was
7 saying, yeah, she would look for other things. But
8 at the end of the day, after you look at the other
9 things, you make a determination that Bobby told this
10 story and these facts support what Bobby said; Doug
11 told this story and these facts support what Doug
12 said, and Dorothy says, "I don't know"?

13 MS. CARDENAS: I think I'd have to look at
14 the whole overall picture to make a decision who was
15 telling the truth more, seeing it that way.

16 MR. COOPER: Okay. Mr. Johnson?

17 MR. JOHNSON: I may be wrong about this,
18 and I agree with what you're saying, but I think it's
19 if I had questions -- I would have questions of my
20 fellow jurors maybe to clarify things. Then if I did
21 miss something and I still wasn't able to come to a
22 decision, then I'd have to vote there is the
23 reasonable doubt.

24 MR. COOPER: Sure.

25 MR. JOHNSON: But I'm old, and so I may not

1 pick up on all the stuff, so I would want to get
2 feedback from my peers.

3 MR. COOPER: And thank you for mentioning
4 that, because I think that's really, really
5 important. I think that anytime there are 12 people
6 in that jury box, I think collectively they're going
7 to have a better recollection. They're going to be
8 smarter, they're going to think of things that I
9 can't, you know. So yes, you're probably going to
10 want to talk it over. But at the end of the day, if
11 everybody still cannot come to a conclusion as to
12 whether Bobby was right or Doug was right, what do we
13 have, Mr. Johnson?

14 MR. JOHNSON: You have reasonable doubt and
15 it would be not guilty.

16 MR. COOPER: Exactly. Thank you.

17 Anybody disagree with that?

18 Is there a difference between a biased
19 witness and a mistaken witness, Ms. Dwore?

20 MS. DWORE: Yes, I believe there is.

21 MR. COOPER: Can you tell me the
22 difference?

23 MS. DWORE: I believe it's easy to make a
24 mistake.

25 MR. COOPER: Sure.

1 MS. DWORE: And a mistaken witness could
2 misspeak or unintentionally misrepresent. But bias
3 is deeper, and it seems to me to indicate an
4 inability to adequately represent the truth, or to
5 present the truth with a definite flavor.

6 MR. COOPER: Okay. Because your truth
7 meter is a little colored, you can't really see the
8 truth because you have that bias; right?

9 MS. DWORE: Right.

10 MR. COOPER: If a confidential informant
11 agrees to testify for the Government and they are
12 told that they can avoid a life sentence and they are
13 given money and they're given other benefits, do you
14 think that might create a bias? That's a softball, I
15 know.

16 MS. DWORE: Did the Titanic have a
17 flotation problem?

18 MR. COOPER: Right. So when a witness who
19 receives those sorts of benefits comes up here and
20 promises to tell the truth, but has been told that
21 they can avoid a life sentence, has been told that
22 they can avoid other charges, has been given money
23 for this testimony, are they as believable as
24 somebody else, as the doctor who is going to come in
25 and talk about the OMI report?

1 MS. DWORE: Probably not. But it's not a
2 decision I would make rapidly. I'd probably weigh
3 it.

4 MR. COOPER: Sure. You would observe the
5 demeanor of the witness on the witness stand, you
6 would listen to the testimony that would be adduced
7 by the Government, and you would listen to the
8 testimony that was brought forth upon
9 cross-examination; right?

10 MS. DWORE: (Nods.)

11 MR. COOPER: And then you'd try to
12 determine, based on all of the circumstances, whether
13 you believe that person; right?

14 MS. DWORE: Correct.

15 MR. COOPER: Thank you.

16 Mr. Mott, how are you doing back there?

17 MR. MOTT: Just fine, sir.

18 MR. COOPER: What reasons do you think an
19 informant might have to perhaps tell something other
20 than the truth?

21 MR. MOTT: Self-preservation would be one.

22 MR. COOPER: Okay. Tell me about that.

23 MR. MOTT: Well, in your case, if they're
24 getting some benefits and reduced sentences and
25 possibly some type of protection, that might be one

1 reason for them to tell a story that might not be
2 exactly the truth.

3 MR. COOPER: Or even a total lie; right?

4 MR. MOTT: That's kind of like not telling
5 the truth.

6 MR. COOPER: So how do you feel, Mr. Mott,
7 about somebody like that getting benefits in return
8 for their testimony in a courtroom here saying things
9 about my client, Billy Garcia?

10 MR. MOTT: That's a good question. I don't
11 like it. I also understand that at times, in order
12 to get some additional evidence, that those types of
13 things are offered. And it then becomes up to me to
14 try to determine whether the credibility of what the
15 person is presenting along with the rest of the
16 evidence is viable.

17 MR. COOPER: Okay. So if a high school
18 principal is walking into the Allsup's store, he
19 attends the same church as Mrs. Marquardt, and he
20 sees her running out of the store with a gun and bag
21 about -- well, it's probably only \$20, does he have
22 the same bias, the same reason to lie, that perhaps a
23 confidential informant that's getting those sorts of
24 benefits would have?

25 MR. MOTT: That's presuming that the

1 confidential informant is going to lie. They maybe
2 have good intentions and they have -- just like the
3 pastor would have. They just happen to not be as
4 reputable a person as that pastor, although that
5 could be a question in some cases.

6 MR. COOPER: I'm not going to go there.

7 MR. MOTT: Well, but I mean, there's
8 variables with all of this. There are confidential
9 informants, I'm sure, who are well-intentioned and
10 perfectly honest, and there's confidential informants
11 who I'm sure are doing everything just for their
12 benefit or out of spite against someone else. The
13 same thing could be true of a police officer or any
14 one of us in this courtroom.

15 MR. COOPER: That's exactly correct,
16 because we're all human. Thank you.

17 Mr. Saiz, at the front row that way. So if
18 you were to hear evidence that the system rewards
19 somebody to tell bigger and better stories in order
20 to have the benefits that we're talking about, what
21 do you think about that sort of a system?

22 MR. SAIZ: I wouldn't agree with it, but at
23 the same time, sometimes you have to give somebody
24 some incentive so they will come out and see if they
25 would tell what they saw or give testimony, something

1 like that.

2 MR. COOPER: So to somebody that is given
3 that incentive, do you readily agree that they are
4 telling the truth just because they promised to tell
5 the truth?

6 MR. SAIZ: No, sir.

7 MR. COOPER: No. You have to listen to
8 everything, you have to listen to the
9 cross-examination, to determine whether or not there
10 is reason to believe. Because sometimes benefits are
11 just too great, and sometimes what results without
12 those benefits is really not such a good life; right?

13 MR. SAIZ: Right.

14 MR. COOPER: Thank you, sir.

15 THE COURT: Are you about to wrap up, Mr.
16 Cooper?

17 MR. COOPER: Not really. I have some
18 specific questions of a number of jurors. What's the
19 Court's pleasure?

20 THE COURT: Well, why don't we approach
21 here.

22 MR. COOPER: Thank you.

23 (The following proceedings were held at the
24 bench.)

25 THE COURT: I guess I mean I don't want to

1 interfere with the defendants if they put something
2 together, but is somebody donating some time to you
3 to take the lead?

4 MR. GRANBERG: I'll donate.

5 THE COURT: I thought Ms. Harbour-Valdez.

6 MS. HARBOUR-VALDEZ: We switched, and he's
7 going to do a little.

8 THE COURT: How much more time do you think
9 you need?

10 MR. COOPER: I'd like 15, 20 minutes.

11 THE COURT: Do you donate 15, 20 minutes to
12 him, Mr. Granberg?

13 MR. GRANBERG: Yes.

14 THE COURT: So we'll give you 20 more
15 minutes and it will come out of Mr. Granberg's time.

16 MR. COOPER: Thank you, Judge.

17 MR. SINDEL: May I remind the Court, I
18 wanted to remind you, Ms. Cardiel Griego wanted to --
19 I just wanted to remind you.

20 THE COURT: Bring her up whenever you want
21 to.

22 MR. COOPER: Can we do it now? Then I
23 can --

24 THE COURT: Yes. Let's see Ms. Cardiel
25 Griego.

1 MR. COOPER: On that side of the bench in
2 the black.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: Ms. Cardiel Griego.

6 (The following proceedings were held at the
7 bench.)

8 THE COURT: Why don't you come up right
9 here.

10 You may need to help me here, Mr. Cooper.

11 But Mr. Cooper was asking you some
12 questions, and I think you said something about not
13 right now or something like that.

14 MS. CARDIEL GRIEGO: I'm just very nervous.

15 THE COURT: Is it hard talking in front of
16 a lot of people?

17 MS. CARDIEL GRIEGO: Yes.

18 THE COURT: And you tell me you don't mind
19 answering Mr. Cooper's questions; you just don't want
20 to answer them in front of everybody. Is that where
21 you are?

22 MS. CARDIEL GRIEGO: It's just very
23 overwhelming for me, everything, so sometimes I don't
24 even understand what he's asking. I'm just a novice.

25 THE COURT: Take a deep breath here. We're

1 all lawyers, but we still are human beings, so we'll
2 just take a breath. So let's just pause. Nobody is
3 going to throw a bunch of questions. Take two or
4 three --

5 MS. CARDIEL GRIEGO: I know.

6 THE COURT: All right. Let's see if we can
7 do it maybe up here at the bench without being in
8 front of everybody. That may be a little more
9 relaxing.

10 MS. CARDIEL GRIEGO: That's okay. That's
11 fine.

12 THE COURT: Mr. Cooper, did you have some
13 questions you wanted to ask?

14 MR. COOPER: I just wanted to talk to you a
15 little bit, ask you a couple of questions. We talked
16 a little bit about presumption of innocence, and the
17 burden of proof being on the Government to prove
18 beyond a reasonable doubt that my client is guilty.

19 MS. CARDIEL GRIEGO: I don't understand all
20 that. So that's -- when you ask me in front of
21 people, I don't know what to answer. They're
22 innocent until proven guilty. I understand that.

23 MR. COOPER: As I'm asking questions, did
24 you have a difficult time understanding what I was
25 asking?

1 MS. CARDIEL GRIEGO: Part of it. Just
2 that, and my nerves. Just everything. This is just
3 very hard for me. And it's --

4 MR. COOPER: And what is -- is there
5 something you can tell me?

6 MS. CARDIEL GRIEGO: My husband has to go
7 back to Santa Fe, and he has to leave me here alone,
8 and I'm afraid. I'm afraid to be here by myself.

9 MR. COOPER: May we have --

10 THE COURT: Let's give it a minute here.

11 MS. CARDIEL GRIEGO: My husband has to be
12 at work. He can't take another day off, and I have
13 to be here longer, and I'm never alone. If everybody
14 knows me -- I'm sorry. I'm not the right person for
15 this. (Crying.)

16 MR. COOPER: Okay. Do you think you would
17 have a difficult time talking with other jurors about
18 this case, as well?

19 MS. CARDIEL GRIEGO: Yes.

20 MR. COOPER: So you wouldn't be -- when you
21 got back into the back room, you would not be able to
22 engage in those discussions with other jurors? I
23 mean, would you have equally as hard a time talking
24 with them as you are now?

25 MS. CARDIEL GRIEGO: Yes.

1 MR. COOPER: Because your problem was, when
2 I asked you a question, you didn't want to talk in
3 front of other jurors; right?

4 MS. CARDIEL GRIEGO: Yes. It's all of it.
5 It's just -- I'm just -- I'm really just having a
6 hard time. These two days have been really hard.

7 MR. COOPER: I see that, and I'm sorry.

8 MS. CARDIEL GRIEGO: I know. If I wasn't
9 afraid to go to jail, I wouldn't maybe have come, but
10 I'm afraid.

11 MR. COOPER: Well, thank you for coming in.

12 MR. SINDEL: Is it okay if we have a moment
13 with the Court?

14 THE COURT: Let Mr. Cooper finish his --

15 MR. SINDEL: I'm sorry.

16 MR. COOPER: I'm really sorry that you've
17 had a difficult time with this. I wish that we --

18 MS. CARDIEL GRIEGO: I know.

19 MR. COOPER: -- we had -- I'm glad you
20 came. I hope that -- I mean, some day you're going
21 to --

22 MS. CARDIEL GRIEGO: I work with seniors
23 with Alzheimer's and dementia. That's what I love
24 doing. You know, this is too much for me.

25 MR. COOPER: Do you think you could be a

1 good juror for the Government, for us, if the judge
2 says you have to stay here and deliberate for the
3 next eight weeks?

4 MS. CARDIEL GRIEGO: I don't know if I can
5 do that. I honestly don't think I can.

6 MR. COOPER: Okay.

7 MS. CARDIEL GRIEGO: I mean, just these
8 last two days for me has just been really hard, and I
9 think to have -- I mean, everybody has to have a fair
10 trial, you know. I understand. I mean, it's too
11 much for me. I just -- I'm having a really hard
12 time. It's so embarrassing that I do this.

13 MR. COOPER: You're fine. It's fine.
14 Judge, I don't believe I have any --

15 THE COURT: All right. You can return to
16 your seat. Thank you very much.

17 MS. CARDIEL GRIEGO: Thank you.

18 MR. COOPER: Thank you.

19 MR. BECK: Do you want a tissue?

20 THE COURT: All right. Why don't you go
21 back and do your questioning.

22 (The following proceedings were held in
23 open court.)

24 THE COURT: Mr. Cooper, do you have
25 additional voir dire examination?

1 MR. COOPER: Mr. Johnson?

2 MR. JOHNSON: Yes.

3 MR. COOPER: I'd like to visit with you
4 again.

5 MR. JOHNSON: All right.

6 MR. COOPER: In looking at your
7 questionnaire, I notice that -- I got the impression
8 that you thought this was a search for innocence.

9 MR. JOHNSON: Can you explain?

10 MR. COOPER: So in this courtroom there
11 will never, ever be a determination that any of these
12 individuals are innocent.

13 MR. JOHNSON: Okay.

14 MR. COOPER: And I say that because the
15 burden of proof on these guys is that they prove
16 beyond a reasonable doubt that they're guilty. So
17 it's either going to be guilty or not guilty. But
18 there is never going to be a verdict form that says
19 innocent.

20 MR. JOHNSON: Okay. I understand, I think.

21 MR. COOPER: Do you see -- is there a
22 distinction?

23 MR. JOHNSON: Yes. I mean, guilty or not
24 guilty, and I understand that. I think one of the
25 things of being here the last couple of days, there

1 has been a lot of clarification that I don't think I
2 totally understood that when I answered the question.

3 MR. COOPER: Okay. But you're okay with
4 this not being a search for innocence, aren't you?

5 MR. JOHNSON: Yes.

6 MR. COOPER: You're the only licensed
7 social worker in your part of the building; right?

8 MR. JOHNSON: That is correct.

9 MR. COOPER: How many clients do you
10 service?

11 MR. JOHNSON: Hard to say. Our census goes
12 up and down. Sometimes we have up to about six or
13 seven. When I left, we were down to three.

14 MR. COOPER: Just three total clients?

15 MR. JOHNSON: Correct, but that's
16 inpatient. So I'm required to service them while
17 they're there during that time, and do the discharge
18 plan.

19 MR. COOPER: What about outpatient?

20 MR. JOHNSON: We don't do outpatient. I
21 send people to outpatient services in the community.
22 But I do the discharge plan, get them hooked up with
23 doctor's appointments and appropriate services upon
24 discharge.

25 MR. COOPER: Is there any reason to believe

1 that that number may increase in the next eight
2 weeks?

3 MR. JOHNSON: It's --

4 MR. COOPER: Who knows?

5 MR. JOHNSON: Yeah, last week we had a lot.
6 This week we don't that very many. There are two
7 social workers on the chemical dependency side that
8 can do what I'm doing, but not as well as I do it,
9 though.

10 MR. COOPER: Who does; right?

11 MR. JOHNSON: That's what I say. I agree
12 with you on that.

13 MR. COOPER: Thank you, Mr. Johnson.

14 MR. JOHNSON: You're welcome.

15 MR. COOPER: Actually, Mr. Johnson, you
16 don't like the Fifth Amendment, do you?

17 MR. JOHNSON: Remind me what that is.

18 MR. COOPER: The Fifth Amendment is my
19 client's right to remain silent; he doesn't have to
20 testify.

21 MR. JOHNSON: Again with that, I don't
22 particularly like that, but now that I have a better
23 understanding of about what means and what it's all
24 about, I don't necessarily have to like something,
25 but I think I'm still looking at the prosecution to

1 do their thing and prove, you know, beyond --

2 MR. COOPER: Reasonable doubt.

3 MR. JOHNSON: -- thank you -- that's what
4 I'm looking for. And as a social worker, I have to
5 struggle with a lot of that and really give people
6 the benefit of the doubt and not necessarily a lot of
7 biases that you alluded to earlier, and try to put
8 that aside. And I think overall I've been able to do
9 that pretty well in my career.

10 MR. COOPER: So would you give the benefit
11 of the doubt to Mrs. Marquardt?

12 MR. JOHNSON: Yes.

13 MR. COOPER: She's accused of an Allsup's
14 robbery.

15 MR. JOHNSON: Yes. I'd have to look at the
16 evidence and go from there.

17 MR. COOPER: Does he get that same benefit?

18 MR. JOHNSON: Yes.

19 MR. COOPER: Okay. And you're okay with
20 that?

21 MR. JOHNSON: Yes, I may not like some of
22 the things that you have mentioned, but he does
23 deserve, with all within me, that he gets the benefit
24 of the doubt.

25 MR. COOPER: He was a member of a prison

1 gang. Does that have any impact on you? Would you
2 say that you can't be fair and impartial in his case?

3 MR. JOHNSON: What I can say is that I
4 don't know any of these men. And I'm expecting the
5 defense and everybody to do a good job so I have a
6 good idea about what's going on and I can make, along
7 with my peers, a good decision.

8 MR. COOPER: Okay. Great. Thank you.

9 Ms. Duncan, you also said that a gang
10 leader should be held responsible for the acts
11 committed by gang members. We've had a big
12 discussion here for the last day and a half. Do you
13 still feel that way?

14 MS. DUNCAN: If the evidence warrants it,
15 just like the buck stops here. If it's proven that
16 he had some connection to what occurred, then, yes.

17 MR. COOPER: Okay. A connection similar to
18 the connection that Mr. Beck had with -- you guys are
19 bad -- with all these conspirators up here?

20 MS. DUNCAN: Yes. Just because he's the
21 leader, if he had no connection and did not have any
22 knowledge of what was going on, then no, he would not
23 be responsible.

24 MR. COOPER: Everybody else in this first
25 row agree with that? Ms. Wise?

1 MS. WISE: Well, I keep going back to
2 because I was a teacher, and I think about -- I know
3 it's not the same.

4 MR. COOPER: Before you go there, what
5 level?

6 MS. WISE: The last I taught was
7 kindergarten.

8 MR. COOPER: Nice. I was an elementary ed
9 major and look what happened. Sheesh.

10 MS. WISE: Well, I think -- and I don't
11 know the particulars of how a gang is run, but
12 sometimes a classroom is kind of like a gang. I
13 mean, I think the teacher may be considered maybe the
14 gang leader. I don't know. I mean, there is some
15 similarity.

16 MR. COOPER: I think it would have been
17 Doug who would have been the gang leader.

18 MS. WISE: I was thinking if my
19 kindergarten had a food fight in the cafeteria, I
20 would be responsible for that. To a certain extent,
21 I would be responsible for that, even if I wasn't in
22 the room, even if I had no idea about it. I would
23 still be responsible. The principal would come to
24 me. You know what I'm saying?

25 MR. COOPER: Sure.

1 MS. WISE: And I think like in
2 corporations, the CEOs hold that responsibility,
3 that's part of what your position is. You take the
4 heat when there is heat, you know? I mean, that's
5 what you get paid for, that's what you take that job
6 for.

7 MR. COOPER: Okay.

8 MS. WISE: So I'm not sure, I'm kind of --

9 MR. COOPER: So if the jury instruction
10 says that that individual has to have done something
11 similar to what Mr. Beck did with his conspirators,
12 and nothing less than that, would you be good with
13 that? Could you follow that law?

14 MS. WISE: I didn't follow your logic
15 there. I'm sorry.

16 MR. COOPER: So at the end of the case
17 you're going to have some jury instruction and the
18 judge is going to tell you what the law is, and he's
19 going to say something to the effect of, if Mr. Beck
20 did some affirmative act and he participated in
21 getting this robbery done, then he's just as guilty
22 as the individuals who committed the robbery.

23 MS. WISE: If that was the instructions I
24 was given, if that was the guidelines I was given,
25 yes.

1 MR. COOPER: You could follow the law?

2 MS. WISE: I could follow that.

3 MR. COOPER: Mr. Mott, you could, as well?

4 MR. MOTT: Absolutely.

5 MR. COOPER: Now, when I first stood up
6 here I talked about what this case was all about, and
7 I described the photographs that you are likely to
8 see. And Ms. Trujillo, yesterday, when you were
9 asked if you could look at those photographs, there
10 was a long, very long pause before you answered that
11 question, how you paused. You're going to have some
12 difficulty looking at those, aren't you? Let me get
13 the microphone for you.

14 MS. TRUJILLO: My brother was brutally
15 beaten and stabbed to death in Albuquerque, and it
16 was a hate crime. So seeing him in the morgue with
17 footprints on his face, I can't -- I'm going to have
18 difficulty with that.

19 MR. COOPER: Okay. Thank you. Before you
20 pass it, do you think you can be fair and impartial
21 to these individuals on trial when you are shown the
22 photographs that may be, although not as close,
23 obviously, but certainly as brutal, as gruesome?

24 MS. TRUJILLO: I think I would have been
25 okay with it. But when you gave a list of them

1 against homosexuals, and you gave a list of -- and I
2 think that's where I would have problems.

3 MR. COOPER: And so because of that, you
4 would not be able to be fair and impartial to these
5 individuals?

6 MS. TRUJILLO: I can't be certain.

7 MR. COOPER: You can't tell me that you
8 can, can you?

9 MS. TRUJILLO: I can't.

10 MR. COOPER: Okay. Thank you very much.

11 Anybody else along those lines talking
12 about those issues or the photographs?

13 Ms. McKee, just because an informant
14 testifies doesn't mean that he's telling the truth;
15 right?

16 MS. McKEE: Right.

17 MR. COOPER: You said in your questionnaire
18 that -- talking about being a little skeptical of
19 informant testimony, you said, in quotes, "While they
20 are doing the right thing now, I believe they should
21 be held accountable for their actions." You would
22 hold those individuals accountable for their actions,
23 wouldn't you?

24 MS. McKEE: If they're guilty, yes.

25 MR. COOPER: If they admit to committing a

1 murder and take the stand and tell you that they're
2 getting some benefit and they're not having to go do
3 a life sentence or otherwise getting their sentence
4 reduced, do you think that's right? Do you think
5 that's fair?

6 MS. McKEE: No.

7 MR. COOPER: Okay. Thank you.

8 Mr. Maestas, in your questionnaire you said
9 that law enforcement is not necessarily credible but
10 then you went on to say that there are two sides to
11 every story; right? Do you remember saying that?

12 MR. MAESTAS: Yes.

13 MR. COOPER: Billy is not going to tell you
14 his side. Just saying. What do you think? Are you
15 going to hold that against him?

16 MR. MAESTAS: No.

17 MR. COOPER: Why not?

18 MR. MAESTAS: I've just got to see all the
19 proof and evidence.

20 MR. COOPER: You know that Billy has a
21 right to remain silent. He doesn't have to get up
22 and take the stand. The Constitution says that he
23 doesn't have to testify. The Constitution is a law
24 just like the law that says you shouldn't kill
25 somebody or you shouldn't speed. It's no less

1 important than the law that says don't murder
2 somebody, and that law says he doesn't have to
3 testify. Sir, are you going to be disappointed when
4 Billy doesn't tell you his side of the story?

5 MR. MAESTAS: No.

6 MR. COOPER: Are you okay with it?

7 MR. MAESTAS: Yes.

8 MR. COOPER: Are you going to be mad at me
9 because I tell him not to tell his side of the story?

10 MR. MAESTAS: No.

11 MR. COOPER: Okay.

12 THE COURT: Are you about to wrap up now,
13 Mr. Cooper?

14 MR. COOPER: I am, Your Honor. I have a
15 couple more questions, then I'm done.

16 Mr. Hinson, I read your questionnaire, as
17 well, and I got the distinct message that you think
18 that snitches lie to get good deals.

19 MR. HINSON: I suppose they do.

20 MR. COOPER: And what do you think about
21 that? What do you think about the Government's use
22 of snitches?

23 MR. HINSON: Unfortunately, I think it
24 might be essential.

25 MR. COOPER: Okay. Do you think that an

1 informant should be forced to assume the consequences
2 that otherwise would come to him?

3 MR. HINSON: You mean, he should never be
4 given an opportunity to snitch and get a benefit?

5 MR. COOPER: Well, should he?

6 MR. HINSON: In cases where someone who's
7 guilty of a greater crime might be prosecuted, maybe
8 that balances out.

9 MR. COOPER: What if it's the same crime?

10 MR. HINSON: For the same crime, that's a
11 different story, then.

12 MR. COOPER: Okay. Thank you, sir.

13 Is there any reason -- anybody, is there
14 any reason that you think that you should not sit on
15 this jury? I've asked a lot of questions, the judge
16 asked a bunch of questions, Mr. Beck did. We
17 missed -- I didn't talk to everybody. And before I
18 have you answer that question, I'd like to know,
19 Ms. Chavez, your husband was an STIU officer; right?

20 MS. CHAVEZ: He still is.

21 MR. COOPER: And he still is. At Southern?

22 MS. CHAVEZ: He's down here.

23 MR. COOPER: Your husband is an STIU
24 officer at Southern New Mexico Correctional Facility?

25 MS. CHAVEZ: No, he's a field agent.

1 MR. COOPER: A field agent?

2 MS. CHAVEZ: Correct.

3 MR. COOPER: And he deals with gangs?

4 MS. CHAVEZ: Yes.

5 MR. COOPER: Do you think you can be fair
6 and impartial, given this case?

7 MS. CHAVEZ: Honestly I don't.

8 MR. COOPER: Thank you.

9 Now I'm going to get back to that previous
10 question when I looked at her and remembered that I
11 forgot to ask that question.

12 But is there any reason why any one of you
13 feels that you should not be selected to sit on this
14 jury? Is there any reason why, if you were sitting
15 between Mr. Castle and me, you would not want
16 somebody with your experiences, with your makeup,
17 being defended by us? If there was somebody just
18 like you with your experiences in that box?

19 MR. MONTROYA: May I please approach the
20 bench?

21 MR. COOPER: Certainly. Your Honor, may we
22 approach?

23 THE COURT: Certainly.

24 (The following proceedings were held at the
25 bench.)

1 THE COURT: Go ahead, Mr. Montoya.

2 MR. MONTOYA: Can you repeat your question
3 so I can --

4 MR. COOPER: Is there any reason why you
5 wouldn't want somebody with your experiences sitting
6 as a juror in this case?

7 MR. MONTOYA: Well, what I believe -- I
8 believe in the Bible. And I believe that prison
9 systems aren't working right now. And some of the
10 Bible teaching -- I'm learning a lot about it -- is
11 teaching an eye for an eye, a tooth for a tooth. And
12 to me, if I feel like I was selected, maybe they're
13 not getting the right punishment; if they do prove
14 it, they're not getting the right punishment. Do you
15 see what I'm saying?

16 MR. COOPER: Do you think that you could
17 be -- given your experiences in life, given -- and
18 we're talking the religious part of it at this point,
19 do you think that you can be fair and impartial in
20 the --

21 MR. MONTOYA: Of course.

22 MR. COOPER: -- in the part of the case
23 where you have to decide whether my client is guilty
24 or not?

25 MR. MONTOYA: Correct, yes, I could.

1 MR. COOPER: Do you think you can?

2 MR. MONTTOYA: I know everyone is equal,
3 everyone gets the benefit of that. And like I said,
4 they have their job to do, and even if you guys
5 decided to do nothing, I'm okay with that, as well.

6 MR. COOPER: But regardless of what Mr.
7 Beck and I do, we're not going to have any impact on
8 the punishment.

9 MR. MONTTOYA: Yeah, exactly. Exactly. And
10 you know and I understand that there are laws that I
11 don't necessarily agree with, so I know as a juror I
12 have a right to -- what's it called -- jury
13 nullification.

14 MR. COOPER: Sure.

15 I don't have anything else.

16 THE COURT: Thank you, Mr. Montoya.

17 MR. BECK: Your Honor, I think there is
18 some pretty good -- I guess I have one follow-up
19 question.

20 I think that the judge will instruct you on
21 your duties as a juror.

22 MR. MONTTOYA: Correct.

23 MR. BECK: We talked about the duty, you
24 know, nonbiased, nonsympathetic juror.

25 MR. MONTTOYA: I understand.

1 MR. BECK: When the judge instructs you
2 that -- the judge instructs you that he provides you
3 the law and that you, the juror, one of the jurors,
4 are to find the facts.

5 MR. MONTROYA: Um-hum.

6 MR. BECK: That you're to apply the law
7 that he gives you to the facts that are found,
8 regardless of how you may feel about that law. You
9 said there are laws.

10 MR. MONTROYA: Yeah.

11 MR. BECK: He tells you that you apply to
12 the law that he gives to those facts, and if you
13 don't agree with it, would you be able to take that
14 oath and apply that?

15 MR. MONTROYA: It's my right as a juror,
16 right, to go with that. Like I said, I don't have
17 all the knowledge of all my laws and my duties as --

18 MR. BECK: Sure. So my question of you is:
19 If the judge gives you an instruction like that, it's
20 your duty --

21 MR. MONTROYA: I guess it would depend on
22 the law, I guess, and my responsibility and my rights
23 as a juror.

24 MR. BECK: Sure, so it sounds to me like
25 you cannot follow his instructions. Like, if he

1 gives you the instruction that the laws that he gives
2 to you, you must apply to the facts that you found --

3 MR. MONTTOYA: Yeah.

4 Q. -- it sounds like that's an instruction
5 that you can't follow; is that right? So it sounds
6 like you could not follow instructions from the
7 judge.

8 MR. MONTTOYA: If I don't agree with that
9 law.

10 MR. BECK: So you cannot follow that
11 instruction?

12 MR. MONTTOYA: No, because as a human, as an
13 American, I have that right to go against it.

14 MR. BECK: I think I've gotten the answer
15 at this point. That's it.

16 THE COURT: Anything else, Mr. Cooper?

17 MR. COOPER: No, Your Honor.

18 THE COURT: Thank you, Mr. Montoya.

19 (The following proceedings were held in
20 open court.)

21 THE COURT: All right. Do you have
22 anything else, Mr. Cooper?

23 MR. COOPER: No, Your Honor.

24 Thank you, ladies and gentlemen, for your
25 time and attention this afternoon. On behalf of

1 Billy Garcia, we really, really appreciate it. Thank
2 you.

3 THE COURT: Thank you, Mr. Cooper.

4 All right. We'll be in recess for about 15
5 minutes.

6 (The venire panel left the courtroom.)

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes.

9 (The Court stood in recess).

10 THE COURT: Let's go on the record. Let me
11 make a few -- it's my understanding y'all have agreed
12 that Ms. Cardiel Griego should be excused. Is that
13 correct, from the Government?

14 MR. BECK: Yes, Your Honor.

15 MR. COOPER: Yes, Your Honor.

16 THE COURT: I'm not going to excuse her
17 right at this moment. The arrangement that she had
18 was, her husband was going to take the bus back at
19 5:45 and she was going to keep the car. She had also
20 switched to a hotel that provided transportation. So
21 actually, her transportation needs were taken care
22 of. So she wasn't without transportation.

23 But nonetheless, if y'all agree, I'll let
24 her go. But I am going to make her sit through the
25 next session. If you want to skip her, I'll let her

1 go then; at the next break we'll slip her out. But I
2 don't want jurors to start thinking they can do what
3 she did and start getting out of jury duty.

4 Patricia Garcia, juror number 40, has been
5 sitting there and she thinks she went to school with
6 you, Mr. Cooper. So we need to figure out what to do
7 with that and how to deal with it.

8 MR. COOPER: Patricia Garcia?

9 THE COURT: Yes, juror number 40. In group
10 2, we had 26 show up. Remember, we've got four down
11 there right now. So we have 30 down there now. Her
12 name is Jamie Ellen Trujillo. She showed up with
13 ammunition in her purse. It appears to be
14 inadvertent. I think the marshals have checked it
15 out. They believe her story. She's very distraught.
16 But they believe that it was totally inadvertent. I
17 think she goes to shooting ranges and just had it in
18 her purse. There is no firearm, if I understand
19 things correctly. That's the way they're handling
20 it. They investigated, and she's a little
21 distraught.

22 But other than that, all right, everybody
23 ready to go? All right. Stay seated. We'll bring
24 the jury in.

25 And Mr. Granberg, you're next. We just

1 need to remember it, though.

2 All right, they're coming in.

3 (The venire panel entered the courtroom.)

4 THE COURT: All right. Y'all come back in
5 and be seated in the seats that you've maintained
6 throughout the two days. I appreciate your patience.
7 I appreciate your working with us.

8 All right. I appreciate everybody coming
9 back and in and out so easily. I appreciate that.

10 Mr. Granberg, do you have additional voir
11 dire examination on behalf of Mr. Christopher Chavez?

12 MR. GRANBERG: Yes, Your Honor.

13 THE COURT: All right, Mr. Granberg.

14 MR. GRANBERG: So ladies and gentlemen, it
15 came to our attention during the break that perhaps
16 one of you may have gone to high school with Mr.
17 Cooper. Ms. Garcia?

18 MS. GARCIA: Yes, sir.

19 MR. GRANBERG: Do you recognize him from
20 high school or --

21 MS. GARCIA: No, it was something he said.
22 And I'm not even sure it's him. He said something
23 about Santa Fe and Portales. Did you graduate in
24 1971, Santa Fe High?

25 MR. COOPER: I did, Your Honor.

1 THE COURT: Okay.

2 MR. SINDEL: Barely.

3 MR. COOPER: May I ask for a lawyer at this
4 point?

5 THE COURT: Why don't we do this,
6 Ms. Garcia? Why don't you come up here and let's
7 talk about it.

8 (The following proceedings were held at the
9 bench.)

10 THE COURT: Wait a minute. All of a sudden
11 you think you knew Mr. Cooper.

12 MS. GARCIA: Today when he was talking,
13 something about Santa Fe and going to school in
14 Portales, I thought, that's coincidental. I went to
15 school in Santa Fe and went to school in Portales.
16 And as I thought it, I went, Oh, my God, that's Bobby
17 Cooper. He played football with my husband. I
18 didn't know him, I didn't run with him. We just
19 ended up -- I only went to Santa Fe for seven months
20 my senior year, and then I went on to school in
21 Portales, and they were there. And I didn't know
22 him, I didn't socialize with him. My husband would
23 be more apt to know him.

24 MR. COOPER: Who did you marry?

25 MS. GARCIA: Ray Garcia.

1 THE COURT: Did he play football?

2 MS. GARCIA: I didn't go to the football
3 games that often.

4 THE COURT: Let me ask you this: He's
5 representing Billy Garcia. Is the fact that Mr.
6 Cooper is representing Mr. Garcia going to make any
7 difference to you in this trial?

8 MS. GARCIA: No, I don't know Mr. Cooper,
9 but it was -- I just was scared when I realized it.
10 I thought, oh, no, if I cause trouble.

11 THE COURT: There is no right or wrong.

12 MS. GARCIA: I was afraid I might cause
13 problems if I didn't say something. I would rather
14 tell you. This was something from 47 years ago.

15 MR. COOPER: A long time.

16 THE COURT: Do you have any sort of
17 feelings about Mr. Cooper so that you would hold it
18 against his client or you would be in favor of his
19 client, either way?

20 MS. GARCIA: No.

21 THE COURT: You're neutral on Mr. Cooper?

22 MS. GARCIA: Yes. Like I said, I didn't
23 even know he was an attorney. I know nothing about
24 him.

25 THE COURT: Do you think you could be fair

1 and impartial to everybody in the room? The
2 Government?

3 MS. GARCIA: Yes.

4 THE COURT: All the defendants and --

5 MS. GARCIA: That's why I came forward. I
6 didn't want to cause trouble.

7 THE COURT: Mr. Beck?

8 MR. BECK: No, thank you.

9 THE COURT: Mr. Cooper?

10 MR. COOPER: No, Your Honor.

11 THE COURT: Mr. Granberg?

12 MR. GRANBERG: No, Your Honor.

13 THE COURT: Thank you, Ms. Garcia.

14 MR. COOPER: He was a good football player.

15 He was a center. Tell me about your letter jacket.

16 How many patches do you have on it?

17 MS. GARCIA: I can't even wear it, it's got
18 so many.

19 THE COURT: I know I shouldn't be wearing
20 it, but when the Hobbs Eagles are playing, I still
21 put it on.

22 MR. COOPER: And I can still get into mine,
23 I'm happy to say.

24 THE COURT: I might bring mine back.

25 MR. COOPER: Yes, I remember when Hobbs

1 came to Santa Fe.

2 THE COURT: I remember that.

3 MR. COOPER: And we had you for three
4 quarters of the game. We were in the game for three
5 quarters and the guys that play two for twos finally,
6 they ran away with it, they beat us.

7 THE COURT: They had some speed.

8 Did you have something, Mr. Blackburn?

9 MR. BLACKBURN: I was going to say, I think
10 the record should reflect that she is probably the
11 only female that went to Santa Fe High School that he
12 didn't date. That's why I had some questions about
13 that.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: All right, Mr. Granberg.

17 MR. GRANBERG: So back to the -- my name is
18 John Granberg. I represent a fellow by the name of
19 Chris Chavez.

20 Chris, if you could raise your hand to
21 everybody.

22 I'm here to ask you a bunch of questions,
23 like Mr. Cooper did. So let me start with my first
24 one here. Okay? I'm sure every one of you is
25 familiar with the concept of an ideal man or an ideal

1 woman, whatever your preference may be. Okay. Let
2 me ask you, and let me start with Ms. Dwore.

3 So Ms. Dwore, have you ever met the ideal
4 man, or your ideal man?

5 MS. DWORE: If I say no, you have to
6 promise not to tell my husband. But in truth, I'm
7 not sure such a beast exists. We all have our
8 quirks. I'm not sure there is a perfect anything out
9 there. So that said, I came as close as humanly
10 possible when I married him.

11 MR. GRANBERG: And indeed, your version or
12 your concept of an ideal man would be different from
13 another's woman's concept; correct?

14 MS. DWORE: Completely.

15 MR. GRANBERG: That brings me to the
16 concept of an ideal juror, and much like Ms. Dwore
17 said previously, there is no such person as an ideal
18 juror, because, much like Ms. Dwore said, my version
19 of an ideal juror will be different from Mr. Castle's
20 or Mr. Lahann's. We all have different biases,
21 preconceived notions that kind of feed into that.

22 And so the reason why I bring this up is
23 that because the ideal is impossible, what I would
24 ask you to do is to, at the very least, be completely
25 truthful in your answers to these questions, because

1 the ideal can never be met but we can do the best we
2 can, and indeed, justice would require that we select
3 the fairest and most impartial juror, jury possible
4 for our clients.

5 And indeed, telling the truth here in court
6 is not just symbolic. I mean, you come into court
7 and you have all these symbols of justice. For
8 example, you have the bench. The bench is elevated,
9 the judge sits in the middle of it. You have the
10 flags on either side of him, you have the state seal
11 behind the judge. And indeed, even the robe he wears
12 is a symbol of justice. But the symbolism alone is
13 not enough. We really need to have substance to our
14 discussions here, and there really needs to be
15 substance to your truthfulness.

16 If you remember when this whole process
17 started yesterday, Ms. Bevel, the courtroom deputy,
18 made you swear to an oath. And I looked it up and I
19 have the oath in front of me, and I'd like to recite
20 it for you. It says, "You do solemnly swear or
21 affirm that you will truthfully answer all questions
22 that shall be asked of you touching your
23 qualification as a juror in this case now called for
24 trial, so help you God." And my recollection was,
25 everybody said, "I do." Does that sound fair? So

1 the very first sentence of that oath is, "You
2 solemnly swear." Mr. Milne?

3 MR. MILNE: Yes, sir.

4 MR. GRANBERG: What does that mean to you,
5 you solemnly swear?

6 MR. MILNE: That I'm going to tell exactly
7 the truth of what is asked of me.

8 MR. GRANBERG: It's not like a halfhearted
9 proposal?

10 MR. MILNE: No.

11 MR. GRANBERG: Not even a lighthearted
12 proposal?

13 MR. MILNE: No.

14 MR. GRANBERG: When you say "solemn," it
15 usually means serious business. Is that fair to say?

16 MR. MILNE: Yes.

17 MR. GRANBERG: And yesterday the judge
18 spoke to you about your civic duty, about serving
19 your country, coming in for jury duty, and voting.
20 And I would agree with him. Those are fantastic
21 civic duties. But I would propose to you that it's
22 also your civic duty not to lie in this process. And
23 I'm not saying any of you have lied. But I would
24 also propose to you that you not hold back anything
25 during this voir dire process. You have a civic duty

1 to be honest about your own beliefs, your own
2 convictions. And hand in hand with that, you have
3 the importance of standing firm with your
4 convictions, standing firm with your beliefs, because
5 that is who you are. And without revealing who you
6 really are, it would be impossible to get a fair and
7 impartial juror for our clients.

8 There are no right or wrong answers. And
9 we spare no time in addressing matters privately when
10 you want to or when you need to, or when you feel the
11 subject matter is too sensitive to discuss in front
12 of everybody else. So if that occurs, please let us
13 know, please let me know. Because if you stand by
14 your convictions, Ms. Menapace, number 4?

15 MS. MENAPACE-CORRAL: Yes.

16 MR. GRANBERG: Does that mean you're a bad
17 person, if you stand by your convictions?

18 MS. MENAPACE-CORRAL: No, it does not.

19 MR. GRANBERG: No. Does that mean you're
20 an obstructionist, for standing by your convictions?

21 MS. MENAPACE-CORRAL: No.

22 MR. GRANBERG: Mr. Lopez, do you agree with
23 her?

24 MR. LOPEZ: I certainly do.

25 MR. GRANBERG: What about -- does it mean

1 that you're unpatriotic by any means?

2 MR. LOPEZ: I think I am being patriotic by
3 being called to this jury duty and serving.

4 MR. GRANBERG: So by standing firm to your
5 convictions, your beliefs, the experiences that
6 molded you into who you are, by revealing it, does
7 that mean you're wanting to diminish or tarnish your
8 civic duty here today? Would that be fair to say,
9 Mr. Lopez?

10 MR. LOPEZ: Yes.

11 MR. GRANBERG: So yesterday the judge had
12 also spoken with -- I believe it was with Ms. Duncan,
13 but I'm not 100% sure, about genealogy; am I correct?

14 MR. LOPEZ: (Nods.)

15 MR. GRANBERG: How many of you here have
16 Scottish roots? Ms. Dwore, Mr. McKinzie, and Ms.
17 Bencomo?

18 FEMALE PANEL MEMBER: (Inaudible.)

19 MR. GRANBERG: I apologize. And my
20 question is: Are any of you familiar with the
21 Scottish legal system? No? Scottish law is kind of
22 peculiar in that in a jury trial setting, you can
23 have more than two verdicts. You have the
24 traditional guilty, you have the traditional not
25 guilty, but in Scottish law they also have a third

1 verdict form, which is not proven.

2 Mr. Troy, what do you think about that?

3 MR. TROY: I'm not Scottish and don't plan
4 to move there, so...

5 MR. GRANBERG: What do you think about that
6 third verdict form, not proven? Does that kind of
7 tie into the discussions that Mr. Cooper had before?

8 MR. TROY: Ask the question again. I'm not
9 sure where you're going with this "not proven."

10 MR. GRANBERG: Okay. So before, Mr. Cooper
11 had discussed the notion that on a jury verdict form
12 it's not "guilty" or "not guilty" -- I mean,
13 "innocent" or "guilty." It's "guilty" or "not
14 guilty." Okay? But in the subset of, you know,
15 American jurisprudence, not guilty can mean two
16 things. Okay? It can mean innocent or it can mean
17 not proven. Okay?

18 So what do you think about that? Do you
19 think that's fair to say? Do you have an issue with
20 that?

21 MR. TROY: Not, it's just what it is.

22 MR. GRANBERG: You don't have a lot to say
23 about that?

24 MR. TROY: No.

25 MR. GRANBERG: How about you, Ms. Riley?

1 How do you feel about that? What do you think about
2 that?

3 MR. RILEY: It seems to me like they're
4 pretty much the same thing, not guilty and not
5 proven.

6 MR. GRANBERG: Not guilty and not proven,
7 pretty much the same thing?

8 MS. RILEY: Pretty much, yeah. You can't
9 prove the guilt, so you're not guilty, because you
10 can't prove it.

11 MR. GRANBERG: Okay. So next I want to
12 talk to you about burden of proof. And I know Mr.
13 Cooper spoke about burden of proof. I'm going to
14 bring up a slightly different subset of that. And
15 that is that the burden of proof rests solely on the
16 shoulders of the prosecution; that they must prove
17 beyond a reasonable doubt that the crime occurred.
18 Okay? The defense has no burden whatsoever. Okay?

19 So let me ask you, Ms. Riley, is it proper
20 to convict someone because they didn't testify?

21 MS. RILEY: No.

22 MR. GRANBERG: No. Is it proper to convict
23 because they didn't stand up to defend themselves?

24 MS. RILEY: No.

25 MR. GRANBERG: Okay. And is it proper --

1 let me jump down the row to Ms. Morales. Would it be
2 proper to convict someone because the Government
3 brought 20 witnesses and the defense only brought 2?

4 MS. MORALES: No.

5 MR. GRANBERG: So let me next talk to you
6 about something called the presumption of innocence.
7 And there is a very fine point that I want to make
8 with this. Because I heard it referenced a couple of
9 times already and the presumption of innocence
10 attaches unless there is evidence beyond a reasonable
11 doubt. And what I had heard spoken amongst the jury
12 panel, the venire, that the presumption of innocence
13 attaches until the person is found guilty. And I
14 guess my point to pick in that is the difference
15 between "unless" and "until."

16 Getting back to the ideal person, okay.
17 Let's say you meet the ideal person on the street and
18 you say to yourself, or you tell the person, "You
19 know what? You know what? You're in love with me.
20 You just don't know it. Okay? You just don't know
21 it yet."

22 But would it be more accurate, more
23 pragmatic, and more fair to say that the ideal person
24 might fall in love with you or might not? Would that
25 be fair to say, Ms. Morales?

1 MS. MORALES: Yes.

2 MR. GRANBERG: And indeed, if they say No
3 to you, then guess what? They're not so perfect
4 after all; right?

5 MS. MORALES: Or they weren't who you
6 thought they were.

7 MR. GRANBERG: They weren't who you thought
8 they were. Exactly. That's right. So the burden is
9 on the Government. And indeed, the presumption of
10 innocence and the right not to testify, the right to
11 remain silent, kind of go hand in hand, because it's
12 the Government's burden to prove its case. It's the
13 Government's burden to bring evidence to present to
14 you.

15 So let's next talk about credibility of
16 witnesses. Okay? Yesterday during the discussion
17 several of you had mentioned that you had law
18 enforcement as neighbors, law enforcement as
19 coworkers, law enforcement as friends. Can I get a
20 raise of hands to the folks who have said something
21 along those lines? That's a good number.

22 Let me ask you this question. How many of
23 you have neighbors who are convicted felons? How
24 many of you have neighbors that are good friends of
25 yours? How many of you have positive beliefs about

1 those convicted felon friends or neighbors? There's
2 a lot less of you. A lot less of you, a lot less
3 hands. So let's go to Mr. Zink.

4 MR. ZINK: Yes.

5 MR. GRANBERG: Why do you think that is?

6 MR. ZINK: What was the question again?

7 MR. GRANBERG: The question is: There was
8 a big difference in the number of hands here between
9 the folks here that have neighbors, friends,
10 relatives who are law enforcement versus the friends,
11 neighbors, relatives who are convicted felons. Now,
12 normally, it seemed to me that there was like a
13 positive sort of bias for law enforcement. But is
14 there also an equally negative sort of bias for
15 convicted felons?

16 MR. ZINK: I think typically there is.

17 MR. GRANBERG: Now, why is that?

18 MR. ZINK: I think maybe because of their
19 past actions. But when somebody commits a crime and
20 is proven guilty and serves their time, I think that
21 they've completed their debt to society, and I also
22 think that people can change.

23 MR. GRANBERG: Okay. So one of the things
24 that you as a juror are going to have to do is value
25 cooperator credibility, the credibility of witnesses.

1 And it goes for law enforcement, whether you believe
2 everything the police officer says or whether you
3 don't believe everything a convicted felon would say.

4 But let me ask you this, Mr. Telles. Let's
5 switch it around.

6 MR. ZINK: I would like to say, though,
7 many of us may have friends that are convicted felons
8 and you don't even know it. So keep that in mind.

9 THE COURT: Okay. So Mr. Telles, when it
10 comes down to assessing the credibility of a
11 cooperator, a witness, what sort of thought process
12 goes through your mind? What sort of things do you
13 consider?

14 MR. TELLES: Well, of course, I'd be
15 watching the individual and to actually see if he's
16 actually presenting any facts, and to see that the
17 individual isn't fidgety and such. I'd make sure --
18 I don't know -- make sure, I guess, that he's not
19 coached or she may be coached.

20 MR. GRANBERG: Okay. So you're kind of
21 referring to their demeanor? Would that be fair to
22 say?

23 MR. TELLES: I would say so, yes.

24 MR. GRANBERG: What about if you believe,
25 based on your observations and what they tell you,

1 whether you think they're being truthful?

2 MR. TELLES: Well, of course, everything is
3 going to have to be presented to you, there again,
4 without a reasonable doubt. So until that's proven,
5 and each individual -- not necessarily means that
6 they're going to be the outstanding witness, I guess
7 you could say.

8 MR. GRANBERG: Let's go to Ms. Reser right
9 next to you.

10 What sort of factors go through your mind
11 when you assess whether somebody is going to be
12 credible?

13 MS. RESER: Body language, types of
14 responses to the questions that are being asked. And
15 if -- well, demeanor, you know. Is he respectful of
16 the Court and everything? And I'm not a great judge
17 of people who are not telling the truth, but I do
18 try.

19 MR. GRANBERG: Let's go to Ms. Doom.
20 What if the person testifying -- I'm sorry,
21 Mr. Doom. I'm sorry. What if the person testifying
22 tells you something that's entirely contrary to what
23 you've experienced before?

24 MR. DOOM: Then they better be able to
25 prove what they say is true.

1 MR. GRANBERG: Or else what?

2 MR. DOOM: I'm probably not going to buy
3 into what they're saying.

4 MR. GRANBERG: And why is that important
5 here in a trial?

6 MR. DOOM: Because along the basis of what
7 Mr. Cooper said, if the person is giving false
8 testimony or have been coached or they're lying about
9 it for benefit, then saying something against what, I
10 guess, would be expected of them, they better be able
11 to prove that they're doing it for the truth and not
12 for benefit.

13 MR. GRANBERG: Not for any sort of benefit
14 that they may gain; correct?

15 MR. DOOM: Yes, sir.

16 MR. GRANBERG: All right. Let's skip to
17 Mr. Swantner. Would you kind of agree with that
18 statement, or do you have any thoughts on that?

19 MR. SWANTNER: What exactly?

20 MR. GRANBERG: On whether a person needs to
21 be truthful in their testimony, and their testimony
22 needs to kind of jibe with your past experiences or
23 perceptions of the world before you think that they
24 are being truthful or credible?

25 MR. SWANTNER: If it goes with your

1 perceptions of the world previously, it's easier to
2 see it as true.

3 MR. GRANBERG: Okay. So let me hearken
4 back to an historical example of this. Take a jump
5 back in time to 2003. Colin Powell was Secretary of
6 State, and he was testifying in front of the UN
7 Security Council, and he was trying to justify an
8 invasion of Iraq to look for weapons of mass
9 destruction. Do you remember that, Mr. Swantner?

10 MR. SWANTNER: Yes.

11 MR. GRANBERG: What's your recollection of
12 that whole situation?

13 MR. SWANTNER: Just that he testified they
14 existed and we later found out they didn't.

15 MR. GRANBERG: Eventually we found out that
16 there were no weapons; right?

17 MR. SWANTNER: Yes.

18 MR. GRANBERG: Let's jump the microphone to
19 Ms. Beavers.

20 Ms. Beavers, do you remember that time,
21 that occasion?

22 MS. BEAVERS: I remember that time. I
23 don't remember that specifically or anything like
24 that.

25 MR. GRANBERG: Let me know if you remember

1 this or not. But do you remember that there was
2 enormous political pressure to invade Iraq at that
3 time?

4 MS. BEAVERS: Yes.

5 MR. GRANBERG: Do you remember that there
6 was enormous social pressure to invade Iraq at that
7 time? Social pressure to seek retribution for
8 terrorist acts against the United States? Do you
9 remember that?

10 MS. BEAVERS: Yeah, I don't know if it was
11 overwhelming, because there were people that were
12 against going in there, too.

13 MR. GRANBERG: But do you remember that the
14 main argument by the Bush Administration at the time
15 was that Saddam Hussein was a very bad, bad man?
16 Does that sound about right to you?

17 MS. BEAVERS: Yeah, and that the main
18 argument was the weapons of mass destruction.

19 MR. GRANBERG: He's a very bad man and
20 there are weapons of mass destruction; that he had to
21 have weapons of mass destruction. Do you remember
22 that?

23 MS. BEAVERS: I do.

24 MR. GRANBERG: Let's jump the microphone
25 over to Mr. Niemeier.

1 So Mr. Niemeier, do you think that that
2 message, that Saddam Hussein was a really, really bad
3 man, affected public perception on whether to invade
4 Iraq at that time?

5 MR. NIEMEIER: Yes, I believe it did.

6 MR. GRANBERG: So the reason why I bring
7 that up, you know, something that happened 15 years
8 ago, was that, just as in 2003, there is going to be
9 enormous pressure in here for you to act, as well,
10 okay. The Government will be chanting the mantra
11 that Mr. Chavez, my client, Mr. Troup, Mr. Billy
12 Garcia, Mr. Joe Gallegos, Mr. Andrew Gallegos, Mr.
13 Patterson and Mr. Arturo Garcia are also really,
14 really bad men. And I don't want you to go into jury
15 deliberations convicting any of these guys because of
16 that mantra. Because what are the things that you as
17 a juror need to consider while deliberating? Is it
18 the accusation against them or is it the evidence?

19 Ms. Solis?

20 MS. SOLIS: That would be the evidence.

21 MR. GRANBERG: That would be the evidence.
22 And solely the evidence; correct?

23 MS. SOLIS: Absolutely.

24 MR. GRANBERG: Okay. So each of these men
25 here is accused of conspiring, one way or another, to

1 commit murder. Okay? Now, I want you guys to freeze
2 your thoughts, I want you guys to freeze your
3 emotions, freeze your gut reactions. Okay? I would
4 like to pass the microphone back to Ms. Dwore, and
5 I'd like to get your initial reactions to that
6 statement. Okay. Five words or less, I just want
7 your initial reactions?

8 MS. DWORE: What am I reacting to?

9 MR. GRANBERG: You're reacting to the
10 accusation being held against them, that one way or
11 another, each and every single one of these men is
12 accused of committing murder.

13 MS. DWORE: They're accused.

14 MR. GRANBERG: And what is your reaction to
15 that?

16 MS. DWORE: They're accused. It may or may
17 not be true.

18 MR. GRANBERG: So basically you don't have
19 a reaction?

20 MS. DWORE: No. It's, like, bring me the
21 evidence. Let's go.

22 MR. GRANBERG: Okay. Let's pass microphone
23 down?

24 MR. MILNE: She just said it for me.
25 That's exactly the way I feel.

1 MR. GRANBERG: And you're Mr. Milne? Okay.

2 Let me go ahead and let's pass the
3 microphone down, and I'll call out everybody's names.

4 Ms. Menapace?

5 MS. MENAPACE-CORRAL: I would need to see
6 the evidence.

7 MR. GRANBERG: Mr. Lopez, what's your gut
8 reaction?

9 MR. LOPEZ: My gut reaction is, it's a very
10 serious charge, and I would have to see the evidence
11 in order to be able to make a determination.

12 MR. GRANBERG: All right. Mr. Lopez,
13 what's your gut reaction?

14 MR. LOPEZ: Mr. Troy?

15 MR. TROY: I'm going with everybody is
16 innocent unless proven.

17 MR. GRANBERG: Everybody is innocent?

18 MR. TROY: Until proven otherwise.

19 MR. GRANBERG: Ms. Riley, how do you feel
20 about it?

21 MS. RILEY: Murder is a terrible thing, but
22 we need to see the evidence.

23 MR. GRANBERG: Ms. Morales?

24 MS. MORALES: My gut reaction is that I
25 am -- want justice for the deceased.

1 MR. GRANBERG: You want justice for the
2 deceased? Okay.

3 Let's hand the microphone back to
4 Mr. Swantner or Mr. Zink, whichever.

5 MR. ZINK: My reaction is, they're innocent
6 until I see proof that they're guilty without a
7 reasonable doubt.

8 MR. GRANBERG: Mr. Torres, what was your
9 gut reaction? Mr. Telles.

10 MR. TELLES: Telles.

11 MR. GRANBERG: I'm sorry.

12 MR. TELLES: It's a gut-wrenching charge,
13 but of course, the evidence would have to prove that
14 they actually did it.

15 MR. GRANBERG: Gut-wrenching? Why do you
16 say that?

17 MR. TELLES: Well, I mean, just the thought
18 that, you know, there has been a murder, and you
19 know, it just kind of gives you that empty feeling
20 like, why would anybody want to do something like
21 that in the first place? But there again, until
22 they're proven -- until the Government proves that
23 they actually committed the crime, of course, they're
24 innocent.

25 MR. GRANBERG: Okay. Ms. Reser?

1 MS. RESER: I kind of agree with him. It
2 is. It's a gut-wrenching thought that someone could
3 be accused of something that horrendous. I don't
4 know of another word for it. But you do have to look
5 at everything. You have to look at all the evidence.
6 You can't -- I'm not making any judgment until I have
7 proof. And I'm sorry, I took more than five words.

8 MR. GRANBERG: That's perfectly fine.

9 Ms. Griego, what was your gut reaction to
10 that?

11 MS. GRIEGO: That's a very heavy thing,
12 very heavy.

13 MR. GRANBERG: And is your perception of
14 the defendants colored by how heavy the accusation
15 is?

16 MS. GRIEGO: I'm not sure. I mean, I just
17 know that murder is a big deal, deciding if someone
18 is guilty or not guilty for a crime like stealing a
19 car or something like that. But murder, that's a
20 heavy thing, because somebody died. So I don't know
21 if it would color any bias against anybody, but I
22 would feel it as a very heavy thing to really need to
23 determine if somebody is guilty or not, and to be
24 really certain about that because somebody died.

25 MR. GRANBERG: Okay. Mr. Doom?

1 MR. DOOM: They are innocent unless proven
2 guilty.

3 MR. GRANBERG: Mr. McKinzie?

4 MR. McKINZIE: Now that the Government has
5 accused them, to paraphrase, show me the money.

6 MR. GRANBERG: I remember an Arby's
7 commercial, Where's the beef, or something like that?

8 MALE PANEL MEMBER: "Where's the beef?"

9 MR. GRANBERG: Okay. Mr. Brugger?

10 MR. BRUGGER: Yes.

11 MR. GRANBERG: What was your reaction?

12 MR. BRUGGER: I say they're innocent until
13 they're proven guilty beyond a reasonable doubt.

14 MR. GRANBERG: All right. Mr. Swantner?

15 MR. SWANTNER: Just simply, this was very
16 serious.

17 MR. GRANBERG: Let's pass the microphone
18 down to Ms. Beavers.

19 MS. BEAVERS: Well, my first thought when
20 you first said that, that's what we're here for, is
21 to determine this.

22 MR. GRANBERG: Right. But you didn't know
23 what the accusation was; correct?

24 MS. BEAVERS: Yeah.

25 MR. GRANBERG: No. So what was your

1 initial gut recollection toward it?

2 MS. BEAVERS: It is what it is. And we
3 were called here and you're going to present stuff
4 and we're going to determine something.

5 MR. GRANBERG: Okay. Mr. Niemeier?

6 MR. NIEMEIER: Yeah, it's a little bit
7 scary to think that somebody is capable of committing
8 murder in here. The charge is a very serious charge,
9 and so I would take it upon myself as being serious
10 to decide whether that was accurate or not.

11 MR. GRANBERG: Something you first said was
12 that it was scary to think that someone would be
13 charged with that sort of charge?

14 MR. NIEMEIER: Yes.

15 MR. GRANBERG: Are you in any sort of fear
16 as you sit there right now, to be in the same
17 courtroom as seven guys accused of murder?

18 MR. NIEMEIER: No.

19 MR. GRANBERG: No?

20 MR. NIEMEIER: Not sitting right here.

21 MR. GRANBERG: Do you want to come on over
22 here?

23 MR. NIEMEIER: Are you afraid?

24 MR. GRANBERG: Never afraid.

25 Ms. Solis, how do you feel about that?

1 What was your gut reaction?

2 MS. SOLIS: Pretty much they are innocent
3 until proven guilty.

4 MR. GRANBERG: You didn't have any sort of
5 fear that Mr. -- not that you were afraid, but any
6 sort of fear concerns that Mr. Niemeier spoke about?

7 MS. SOLIS: No.

8 MR. GRANBERG: No?

9 MS. SOLIS: Not at all.

10 MR. GRANBERG: Okay. Let's pass the
11 microphone to Ms. Lee.

12 How did you feel about that? What was your
13 gut reaction knowing the charge?

14 MS. LEE: Well, I would hope that if I was
15 ever accused of something, that the jury in my trial
16 would presume me innocent unless the evidence was
17 overwhelming in the other direction, and --

18 MR. GRANBERG: Overwhelming in the other
19 direction?

20 MS. LEE: Yes. If it was proven beyond a
21 reasonable doubt. But obviously, but I'd like to be
22 innocent until that's proven.

23 MR. GRANBERG: Let's pass the microphone
24 across the aisle, and I'll end at the end of the
25 aisle here. So Ms. Nitterauer?

1 MS. NITTERAUER: My first reaction was:
2 How awful to be accused of that.

3 MR. GRANBERG: Okay. So kind of sympathy
4 for these fellows? Is that fair to say?

5 MS. NITTERAUER: Maybe a little. I don't
6 know. Just the accusation would hurt me terribly.

7 MR. GRANBERG: If you were accused
8 similarly?

9 MS. NITTERAUER: Yes.

10 MR. GRANBERG: Ms. Patricia Duncan, what
11 was your gut reaction? What was the first thought
12 that flashed across your mind?

13 MS. DUNCAN: That trying to find innocence
14 or guilt of somebody who is accused of murder is a
15 very difficult thing, and I'd like to know all the
16 information possible before making a decision.

17 MR. GRANBERG: Okay. Mr. Skousen?

18 MR. SKOUSEN: I think it's very -- it puts
19 a lot of pressure on me as an individual, a
20 tremendous amount of responsibility, to make sure I
21 understand the facts of the case and to make sure
22 that I can truly say this individual is guilty beyond
23 reasonable doubt, because there are tremendous
24 consequences if someone is convicted of murder, and
25 I'd hate to have to live my life thinking I convicted

1 someone who was innocent -- or not guilty.

2 MR. GRANBERG: Ms. Wise. What was your gut
3 reaction?

4 MS. WISE: That many lives are being
5 touched. In the whole courtroom, many lives are
6 being touched.

7 MR. GRANBERG: Okay. Mr. Medina.

8 MR. MEDINA: I guess in five words I'd say,
9 show me the proof first, you know. Otherwise, if you
10 can't prove it, how are they going to get convicted
11 or not?

12 MR. GRANBERG: Let's go to Mr. Mott. We'll
13 end with Mr. Mott on this line of questioning.

14 What was your gut reaction? What was your
15 first reaction?

16 MR. MOTT: We've got a lot of work to do
17 here.

18 MR. GRANBERG: All right.

19 Let me next talk to you about possibility
20 here; hypothetical possibility. Okay? Where you may
21 have ten witnesses who come up here, testify to the
22 same thing. Hypothetically. I'm not saying that's
23 going to happen. But hypothetically, okay?

24 Hypothetically, if all ten witnesses say
25 the sky is green, okay, the sky is green, something

1 entirely contrary to your common sense. Does it
2 matter to you that what they say is entirely contrary
3 to your perception of reality, or do you agree with
4 them? Okay, if ten people said -- these ten guys
5 said the sky is green, I'm going to go with it?

6 Let's go to the next row here. I haven't
7 picked on anyone in the second row.

8 Ms. Leah Nelson. Sorry, down there at the
9 end. So let me repeat the question. Let me repeat
10 the hypothetical. Okay? So ten witnesses come in
11 and they say the sky is green, they're all agreed on
12 that one particular point, but it is contrary to
13 common sense. Let's put it that way. What do you
14 do? Do you agree with them, or do you disagree with
15 them?

16 MS. NELSON: I would disagree with them.

17 MR. GRANBERG: Why would you do that?

18 MS. NELSON: Because of common sense. I
19 would wonder if they all, like, had eye difficulties
20 or were wearing the same sunglasses. I don't know.
21 Their perception may not be mine, but I'm not going
22 to change mine.

23 MR. GRANBERG: Well, I'll be honest with
24 you. I've seen a green sky once, but that's because
25 a tornado was coming down the road. But if all ten

1 people said the sky was green, would you also think
2 that, you know what, perhaps all ten people are not
3 being truthful, would that cross your mind?

4 MS. NELSON: It would.

5 MR. GRANBERG: Would it cross your mind
6 that perhaps all ten men have the same sort of
7 agenda?

8 MS. NELSON: It could be that they would
9 have the same agenda, or they were seeing it in a
10 different viewpoint than myself. I'm not sure.

11 MR. GRANBERG: How about you, Mr. Saiz? Do
12 you agree with Ms. Nelson?

13 MR. SAIZ: I agree. I feel like if you had
14 ten different people say the same thing ten different
15 times, they've probably been coached on and are
16 probably aware of the situation.

17 MR. GRANBERG: Okay. Would you think that
18 they were being truthful?

19 MR. SAIZ: I guess I would have to listen
20 to them, and it would depend on what they were
21 saying.

22 MR. GRANBERG: Okay.

23 MR. SAIZ: If you go back to the green sky,
24 then obviously not.

25 MR. GRANBERG: Well, you know, the green

1 sky is an extreme example.

2 But let's go to Mr. Meyer here. Okay?

3 Mr. Meyer, if ten jurors came up and said, "You know
4 what, the sky is green," would you think they are
5 being truthful, or would you think that something is
6 going on?

7 MR. MEYER: If I went outside every day and
8 I saw a blue sky and ten guys are tell me the sky is
9 green, of course they'd be lying.

10 MR. GRANBERG: Each and every one of them?

11 MR. MEYER: If I saw a blue sky and they
12 went out and saw a green sky, yes.

13 MR. GRANBERG: Because it doesn't make
14 sense; correct?

15 MR. MEYER: It does not make sense. That's
16 a black and white.

17 MR. GRANBERG: That is a very
18 black-and-white example. But I think it's a very
19 good example to give to you guys.

20 Let me talk to you next about tattoos.
21 Before I start talking about tattoos, let me loop
22 this back, this entire question, back to standing by
23 your beliefs. So hypothetically, if you're in a jury
24 room, some people may believe those ten people and
25 you may not. Okay. Are you going to stand by your

1 beliefs, your convictions, your evaluation, your
2 independent evaluation, that, you know what, the sky
3 is blue, I don't care what these ten guys are saying,
4 and I don't care what the other jurors are saying.
5 The sky is blue.

6 Is that something that you can stand by
7 Mr. Carrillo?

8 MR. CARRILLO: Yes.

9 MR. GRANBERG: So if it's ten people that
10 say -- that agree the sky is green, but you think the
11 witnesses are lying, are you going to be able to
12 stick with your guns, stick with your beliefs, stick
13 with your own evaluations?

14 MR. CARRILLO: Yes, because I see the sky
15 is blue all the time, so...

16 MR. GRANBERG: Mr. Kimmick, what's your
17 thoughts on that?

18 MR. KIMMICK: The sky being green?

19 MR. GRANBERG: Yes.

20 MR. KIMMICK: If you're -- if you listen to
21 people's testimony, it doesn't mean you're going to
22 check your common sense and your sensibilities at the
23 door. You know there's going to be something there
24 that tells you this guy might be full of bull
25 excrement.

1 MR. GRANBERG: What if your fellow jurors
2 are saying they're agreeing the sky is green?

3 MR. KIMMICK: I would seriously question as
4 to how they made it onto the jury, but they could try
5 their best to go through and convince me, but it
6 doesn't mean it's going to happen.

7 MR. GRANBERG: Right. So my question to
8 Ms. Garcia. Do you stick with your beliefs, or do
9 you eventually cave in to the sky is green?

10 MS. GARCIA: I'm going to stick with my
11 beliefs.

12 MR. GRANBERG: Stick with your beliefs?
13 Okay.

14 Ms. Robyn Trujillo, what would you do?

15 MS. ROBYN TRUJILLO: The same thing. Stick
16 with what I know and what I believe.

17 MR. GRANBERG: And Ms. Camille Trujillo,
18 what would you do?

19 DR. PELLEGRINO: Dr. Pellegrino, Camille
20 Pellegrino.

21 MR. GRANBERG: Yes. I'm sorry.

22 DR. PELLEGRINO: I would like to hear out
23 why my fellow jurors are believing that, but I would
24 stay by what my experiences have shown me to be true.

25 MR. GRANBERG: Okay. So let me switch

1 gears here and kind of talk about tattoos. I kind of
2 jumped ahead here. Is there any reason why one
3 person may have more tattoos than another?

4 DR. PELLEGRINO: They might want to
5 symbolize something or show something, or they just
6 esthetically like it.

7 MR. GRANBERG: Okay. Let's go to
8 Dr. Marquardt. My client here, Chris, Mr. Chavez,
9 has a lot of tattoos. Okay? Now, I know that the
10 rest of the panel had said that they wouldn't hold it
11 against anyone to have tattoos, but are there any
12 other reasons why one person may have more tattoos
13 than another?

14 DR. MARQUARDT: Depends on the individual
15 and what their experience are. It's an outward
16 expression of something for them. It doesn't
17 necessarily mean anything to me.

18 MR. GRANBERG: Could the person having more
19 tattoos be more of an artist than the other person?

20 DR. MARQUARDT: Or they know an artist.

21 MR. GRANBERG: Or they know an artist. Are
22 they more of an aficionado of the drawing, or
23 whatever it is; correct?

24 DR. MARQUARDT: Perhaps.

25 MR. GRANBERG: Let's see here. Let me just

1 jump through questions here. I probably have one
2 more for Ms. Morales. I think she's over there in
3 the alternate box.

4 So Ms. Morales, yesterday you came up to
5 the bench and you disclosed some information to the
6 lawyers, the attorneys, about your acquaintances,
7 your job, your acquaintances. Would your job or your
8 acquaintances affect your ability to hear the
9 evidence and testimony in any sort of fashion in this
10 particular trial?

11 MS. MORALES: I'm afraid that it might.

12 MR. GRANBERG: Okay. So unfortunately, we
13 don't exactly have the luxury of, you know, possibly
14 selecting for you to be on the jury panel and then
15 having you decide later on you might not be able to
16 do it. So if I had to pin you down to a solid
17 answer, here and now, what would your answer be?
18 Would you be able to be a fair juror? Would you
19 consider yourself, you know, to be quite the ideal
20 juror candidate for this trial?

21 MS. MORALES: For this particular one, I'm
22 going to say no, because I can't promise either side
23 a 100% answer.

24 MR. GRANBERG: Okay. So let me revisit
25 that. You said you couldn't promise either side?

1 MS. MORALES: I can't promise that, yes,
2 I'm going to be -- I'm going to go with somebody I
3 know; or no, I'm going to be completely, you know,
4 unbiased towards people that I've had a previous
5 relationship or knowledge of.

6 MR. GRANBERG: But would you feel that you
7 could be fair and impartial in this trial?

8 MS. MORALES: Again, if you're going to pin
9 me down to an answer, I would say no. I would say I
10 would do the very best that I can because I believe
11 that's what people deserve. But I'm not going to say
12 100% that I could.

13 MR. GRANBERG: Okay. Let me skip back to
14 Mr. Steven Johnson, juror 47.

15 MR. JOHNSON: Yes, sir.

16 MR. GRANBERG: Now, due to the nature of
17 your work -- you are a social worker -- do you tend
18 to help people out who may not have the best life or
19 make the best decisions? Would that be fair to say?

20 MR. JOHNSON: Yes.

21 MR. GRANBERG: Would it also be fair to say
22 that given your work experiences, that it would tend
23 to color how you view other troubled persons?

24 MR. JOHNSON: When you say "color," what do
25 you mean?

1 MR. GRANBERG: Not color. Troubled.
2 Troubled persons.

3 MR. JOHNSON: Do I have a bias towards
4 that?

5 MR. GRANBERG: Well, I mean, what I'm
6 saying is: Would it color your perceptions? Would
7 it impact your perceptions?

8 MR. JOHNSON: No.

9 MR. GRANBERG: No. So would you feel that
10 you would be -- notwithstanding your work, you could
11 be a fair and impartial juror in this particular
12 trial?

13 MR. JOHNSON: Yes. The people I work with,
14 I always try to give them the benefit of the doubt,
15 kind of the attitude of "show me," and hopefully
16 they'll be able to turn it around. Because I'm
17 trying to get them to make better choices and have
18 better outcomes in their life. It doesn't always
19 work out that way, but in this particular setting,
20 again, I have to have proof and make a fair decision.

21 MR. GRANBERG: What about tattoos? Let me
22 bring that up with Mr. Chavez again. Do you see a
23 good amount of tattoos on the folks that you deal
24 with in work?

25 MR. JOHNSON: Yeah, I do. I see a lot of

1 them.

2 MR. GRANBERG: And do you have any sort of
3 negative sort of bias for people that do have those
4 tattoos?

5 MR. JOHNSON: Not really. I sometimes
6 think, What the heck were they thinking at the time.
7 But it doesn't really bother me.

8 MR. GRANBERG: All right. Well, ladies and
9 gentlemen, thank you very much for putting up with my
10 questions, and asking you repeated questions over and
11 over, but it was very important that we flesh out
12 some of these ideals that you may have so that we can
13 get as -- fairest and most impartial jury possible
14 for our clients here. And thank you for your time.

15 THE COURT: Thank you, Mr. Granberg.

16 Ms. Harbour-Valdez, do you have additional
17 direct voir dire examination you wish to conduct on
18 behalf of Mr. Troup?

19 MS. HARBOUR-VALDEZ: I do, Your Honor.
20 Thank you.

21 THE COURT: Ms. Harbour-Valdez.

22 MS. HARBOUR-VALDEZ: Good afternoon,
23 everyone. I am Cori Harbour-Valdez, and as you heard
24 yesterday, I, along with Pat Burke, represent Edward
25 Troup. I have the unenviable position of going at

1 4:10 in the afternoon when you've heard a lot of
2 these questions all day long and all day yesterday,
3 so I'm going to ask you to bear with me because
4 obviously, Mr. Troup deserves just as much of your
5 attention and honesty and candor as everyone else in
6 this room, and there are really important concepts
7 that we're going to need to cover to make sure that
8 we get the most fair and impartial jury. And you're
9 going to hear a lot of these terms over and over
10 again, so I'm going to apologize ahead of time, but I
11 do want to make sure that we cover our bases.

12 Since I'm going to be asking you questions
13 about yourselves and ask you to open up, just a
14 little bit about me. And you probably can already
15 tell I'm from Texas. That accent does tend to come
16 out. I grew up in a small town in southeast Texas.
17 I went to UT undergraduate, I went to law school in
18 Houston, and then I moved to El Paso 21 years ago out
19 of law school.

20 I went to El Paso with the intent of
21 staying for one year as a law clerk for the chief
22 justice of the Court of Appeals there, and 21 years
23 later I'm still there. So I'm obviously licensed in
24 New Mexico. I do a lot of work in both states. So
25 if you hear the Texas accent, that's where it comes

1 from.

2 I have been in private practice in my own
3 firm for about 14 years, doing primarily criminal
4 defense.

5 Mr. Burke is from Denver, Colorado. He's
6 been doing this a lot longer than I have, but he was
7 kind enough to let me talk to you today, so I
8 appreciate your time ahead of time.

9 So first, I want to talk about how many of
10 you walked in yesterday, saw all of our clients
11 sitting up here, and automatically thought, What did
12 they do? What did they do to get here? Show of
13 hands? I mean, we automatically think that; right?
14 They had to have done something. It's just the way
15 we are programmed to think. It's just the biases
16 that we have, the presumptions that we have.

17 We've talked a lot about the biases and how
18 they come in many different forms, and that's what
19 we're here to explore today. No one is going to ask
20 you to put aside any strongly held belief that you
21 have. We want to talk about these. We want to talk
22 about what may make you a good or not a good juror
23 for this case.

24 And I can relate. I actually had the
25 opportunity to serve on a jury last year. I never

1 thought I would have that opportunity, because no one
2 wants a lawyer on their jury; right? No one wants me
3 second-guessing them, how they present their case.
4 Did they do that right? Did they lay the foundation?
5 They don't want any Monday-morning quarterbacking
6 from someone like me.

7 But I got lucky. I got picked. And I was
8 thrilled, because it's something I've always wanted
9 to do. I've always wanted to sit over there and go
10 through that process, and I did it last year in
11 El Paso. It was a civil case. We sat through five
12 days of testimony, and they settled on the morning
13 that we were going to start deliberations. So I
14 almost got to do it.

15 But it was really a great process for me.
16 I think it's the best process that we have. I can't
17 imagine doing it any other way. So I can relate to
18 you having to sit here and listen to us talk and talk
19 and talk, but it is so very important for us to make
20 the system work. It's so very important for our
21 clients to learn about who can best sit in judgment,
22 because that's what we're asking you to do. Just
23 like those attorneys in El Paso wanted me to help
24 solve their dispute before they settled, we're going
25 to ask you to sit in judgment on our clients. So

1 it's very important. So again, I can relate and I
2 appreciate your time.

3 Mr. Cooper gave you an example of not being
4 able to sit on a case dealing with banks due to his
5 bias, and I've got a similar one. It's not quite as
6 heavy. But my example would be if Matthew
7 McConaughey was on trial. I love Matthew
8 McConaughey. He's my favorite actor. We were
9 actually at UT together. He was a bartender at a bar
10 down on Sixth Street. I love it. I love his work.
11 Just think he's great. So I could obviously never
12 sit in judgment of Mr. McConaughey. I just couldn't
13 do it.

14 I need to know those kinds of things about
15 y'all. If you don't think you can sit in judgment of
16 Mr. Troup, whether it's because this case involves
17 murder, assault, gangs, drugs, prison, tattoos, any
18 of the uncomfortable things that we've heard about
19 today, I need to know that now.

20 And it's totally fine. I would venture to
21 guess that most of us in here don't normally deal
22 with those kinds of things on a daily basis. It's
23 not something that we sit around and talk about,
24 prison gangs and murders and things like that. So
25 that's fine. I just need to know that, and Mr. Troup

1 needs to know that, just like all the other
2 defendants need to know. If it's something you're
3 not comfortable with and you don't think you could be
4 a good juror, absolutely fine. You may be great on
5 another case.

6 So let me talk to a couple of people about
7 that. Ms. Scifres, did I get that right?

8 MS. SCIFRES: Um-hum.

9 MS. HARBOUR-VALDEZ: Are you okay with
10 that? I mean, is there anything about those topics
11 that just make you think, I can't do this?

12 MS. SCIFRES: Not off the top of my head,
13 no.

14 MS. HARBOUR-VALDEZ: You could keep an open
15 mind?

16 MS. SCIFRES: Yes.

17 MS. HARBOUR-VALDEZ: Okay. Anyone else on
18 that row just think that these topics are just not
19 for you, that you don't think you could be fair?
20 Everybody good?

21 How about the row in front of you?
22 Mr. Mott?

23 MR. MOTT: The question?

24 MS. HARBOUR-VALDEZ: Anything about the
25 topics we've talked about today, this type of case,

1 the type of allegations, the tattoos, the gang, the
2 murder, the drugs, that you just think, Probably I'm
3 not the best person to sit in judgment? You're okay
4 with that?

5 MR. MOTT: Yes.

6 MS. HARBOUR-VALDEZ: Okay. Anyone else on
7 that row just having some issues, some doubts?

8 Mr. Skousen? Did I say that properly?

9 MR. SKOUSEN: You did. No, I don't have
10 any doubts here.

11 MS. HARBOUR-VALDEZ: And you can presume
12 all of these gentlemen not guilty right now? They
13 are presumed innocent, actually. No problem with
14 that?

15 MR. SKOUSEN: No problem.

16 MS. HARBOUR-VALDEZ: Okay. Very good. Let
17 me talk about the presumption of innocence because I
18 know a couple of people have said it a couple of
19 different ways. I mean, one of the central concepts
20 of a fair trial in this country is that a person is
21 presumed innocent unless the Government proves them
22 guilty beyond a reasonable doubt.

23 And you've heard that today, you've heard
24 it yesterday, but these charges right now are just
25 allegations. Mr. Cooper talked a little bit about an

1 indictment. It's just an allegation. Who in here
2 has ever gotten a speeding ticket? Me, too,
3 unfortunately. Got one just recently.

4 And how many of you think the officer got
5 it wrong? Right? I do. I do. I filed my notice
6 and I requested a trial, because I don't think it was
7 me. I think it was the car next to me. I don't
8 think it was me speeding. I think he got the wrong
9 guy. It was four lanes on the freeway in El Paso,
10 and I think his gun was pointing at the wrong car.
11 But I get to go challenge that allegation.

12 That's all this is. These gentlemen are
13 charged with allegations at this point, and they're
14 all exercising that right to challenge that
15 allegation. Everybody okay with that? Everybody
16 thick they have that right and you're not going to
17 hold it against them just because they have an
18 allegation against them? Okay. Very good.

19 Let's talk about the fact -- and I know
20 I've said a little bit about this -- some of these
21 alleged crimes you've heard took place in prison.
22 Mr. Cooper also talked about the fact when Mr. Billy
23 Garcia was indicted, he wasn't in prison at the time.
24 Same for Mr. Troup. Mr. Troup was living and working
25 in Albuquerque.

1 Now, the fact that these allegations may
2 have happened a number of years ago and he was in
3 prison at the time -- anybody have a problem? And
4 I'm going to talk to Dr. Pellegrino, because I know
5 you made a comment on your questionnaire, and I think
6 the judge touched on it earlier. But before I
7 forget, University of Missouri Kansas City --

8 DR. PELLEGRINO: Right.

9 MS. HARBOUR-VALDEZ: Kangaroos; right?

10 DR. PELLEGRINO: Yes.

11 MS. HARBOUR-VALDEZ: One of the best
12 college mascots there are. Kangaroos.

13 DR. PELLEGRINO: KC Kangaroos.

14 MS. HARBOUR-VALDEZ: You made a comment
15 about that, about how it would be difficult to ignore
16 that stigma? But you think you could; correct? You
17 could be fair despite those allegations?

18 DR. PELLEGRINO: Yes.

19 MS. HARBOUR-VALDEZ: Mr. Troy, I think you
20 had a similar comment on your questionnaire. Could
21 you ignore that, that these may have happened in
22 prison and so there may be some additional thoughts
23 that you have about someone being in prison and being
24 excused of a crime?

25 MR. TROY: I think at the time if they were

1 in prison, I'd assume they'd already been convicted
2 of something.

3 MS. HARBOUR-VALDEZ: That's probably a safe
4 assumption. We would hope we don't send too many
5 innocent people to jail.

6 MR. TROY: Correct.

7 MS. HARBOUR-VALDEZ: The fact that they've
8 been convicted of something, they're coming into this
9 court right now with a clean slate; right? Do you
10 agree with that?

11 MR. TROY: Yes.

12 MS. HARBOUR-VALDEZ: And you can give every
13 one of these gentlemen a clean slate? The fact that
14 it happened in prison or out, it's still just an
15 allegation. Do you agree with me?

16 MR. TROY: Yes.

17 MS. HARBOUR-VALDEZ: And you're not going
18 to hold that against them?

19 MR. TROY: No.

20 MS. HARBOUR-VALDEZ: That is exactly what
21 the law requires. As he sits here today, Mr. Troup
22 is innocent, just like Mr. Garcia, Mr. Patterson, Mr.
23 Gallegos, Mr. Garcia, Mr. Chavez, and the other Mr.
24 Gallegos. All of them are presumed innocent. And I
25 know we've talked about that, but I just want to make

1 sure we're all good with that.

2 So we're not really starting on a level
3 playing field. Would you agree with that,
4 Ms. Garcia?

5 MS. GARCIA: Yes.

6 MS. HARBOUR-VALDEZ: I'm not going to walk
7 around like Mr. Cooper. I'll end up falling down. I
8 start going with my hands, and I'll lose it.

9 Ms. Garcia. The question was whether we're
10 not starting on a level playing field right now.

11 MS. GARCIA: Now, could you restate that?
12 We're not?

13 MS. HARBOUR-VALDEZ: We're not starting on
14 a level playing field; right?

15 MS. GARCIA: No, we're not.

16 MS. HARBOUR-VALDEZ: Right. That's right.
17 Because these gentlemen are presumed innocent.

18 MS. GARCIA: That's right.

19 MS. HARBOUR-VALDEZ: So you -- I'm asking
20 everyone in here to promise that you're going to sit
21 right here and you're going to presume that all of
22 these gentlemen are presumed innocent, and it has to
23 stay that way until the Government has presented
24 their side of the case, because they have the burden,
25 they're going to go first.

1 If the defense decides to present any
2 evidence -- and we don't have to; right? Everyone
3 agrees with that. We can sit on our hands and not do
4 anything, and that's okay. But until both sides have
5 done what they're going to do and both sides have
6 rested, these gentlemen are still presumed innocent;
7 correct? I see everyone shaking their heads. That
8 doesn't change. Yes, ma'am?

9 MS. GRIEGO: I have a question.

10 MS. HARBOUR-VALDEZ: This is Ms. Griego,
11 correct?

12 MS. GRIEGO: I'm just trying to be honest
13 here.

14 MS. HARBOUR-VALDEZ: That's what we want.

15 MS. GRIEGO: Because we recognize that
16 these gentlemen are all presumed innocent right now,
17 and I would endeavor to maintain that throughout.
18 But realistically speaking throughout a trial --
19 which I have never sat on a trial before, but I'm
20 assuming that these gentlemen here are going to bring
21 in people who are going to speak, and perhaps they're
22 speaking, and you're going, okay, I believe this, you
23 know, at that particular moment I believe that.

24 So now they don't look as innocent as they
25 did. But then, of course, you have somebody -- isn't

1 it like -- how can you help -- I mean, we're human.
2 So how can we maintain that, when we're going to be
3 hearing testimony that obviously is going to sway us
4 as we're going, and hopefully ultimately at the end,
5 you know, we're going to be able to make a decision
6 on that.

7 But that's what I don't understand, is,
8 depending on the testimony, it seems like it would be
9 difficult to maintain that throughout the trial, that
10 presumption of innocence; that it would change as
11 you're seeing -- either disregarding testimony or
12 accepting testimony as, yeah, I think that's --

13 MS. HARBOUR-VALDEZ: That's exactly what
14 we're going to ask you to do and that's what the
15 judge is going to instruct you to do. These
16 gentlemen are going to stay innocent until
17 everything -- both sides have closed and rested. You
18 don't get to start talking about that until you get
19 back in the jury room and start deliberating.

20 MS. GRIEGO: I'm not talking about talking
21 about it.

22 MS. HARBOUR-VALDEZ: Inside your own head
23 you're going to have to be --

24 MS. GRIEGO: We're going to have to be
25 swinging --

1 MS. HARBOUR-VALDEZ: You have to keep that
2 presumption. That stays on this side of the room
3 until you get back there and start deliberating.
4 Obviously, you're going to be processing witnesses.
5 That's what we want you to do. You're going to be
6 judging the credibility of these witnesses and you're
7 going to be weighing evidence, and you asked a
8 question about that earlier, about circumstantial
9 versus direct. All of that is going to be
10 processing, obviously. But you've got to keep that
11 presumption. You cannot at one point say, "Well,
12 I've heard enough. I don't have to listen to
13 anything else because that guy just did it for me."

14 MS. GRIEGO: So what you mean by that is,
15 we keep that open mind of innocence, but we can't
16 stop our human nature of thinking, Okay, that sounds
17 pretty credible; okay, that one doesn't. It's
18 balanced this way or that way. And at the end,
19 you'll come out at a certain point.

20 MS. HARBOUR-VALDEZ: Right. After you've
21 sat down and spoken with your fellow jurors and
22 shared your opinions and weighed the testimony and
23 weighed the evidence. But you have to keep that open
24 mind.

25 I think one thing that may help, also, is

1 if you're selected for this jury, you're going to be
2 allowed to take notes. So maybe taking those notes
3 along the way, and, oh, this person, check mark; or
4 this person, X. However you want to do it. But you
5 have to keep that open mind. That's what the judge
6 is going to instruct you to do. If you don't think
7 you can keep that open mind, that's something we need
8 to know right now.

9 MS. GRIEGO: That makes sense. I mean, the
10 way I was perceiving it is, I could not think about
11 anything other than their innocence until the very
12 end, which didn't make sense to me.

13 MS. HARBOUR-VALDEZ: Very good. I'm going
14 to follow up on a question that Mr. Granberg asked.
15 I think it was Mr. Mott. When Mr. Granberg was
16 asking, what is your initial assessment or what were
17 your -- five words to describe -- and I'm sorry,
18 John, I'm probably butchering your question. But you
19 said, "A lot of work to do." Is that right,
20 Mr. Mott? That's what I wrote down.

21 MR. MOTT: That is correct.

22 MS. HARBOUR-VALDEZ: That would be the
23 Government has a lot of work to do?

24 MR. MOTT: No. As jurors, we have a lot of
25 work to do, to listen to all of the evidence and to

1 come to a decision regarding guilt or not guilty.

2 MS. HARBOUR-VALDEZ: Would you agree with
3 me that the Government, though, has a lot of work to
4 do?

5 MR. MOTT: Absolutely. All of that has
6 been established. I was talking about from my
7 perspective. You asked for my gut reaction. Whoever
8 winds up on the jury has a lot of work to do, to go
9 through this. We've got eight weeks ahead of us.
10 These are very serious charges, and we need to be
11 very diligent in the work we do, to do what we need
12 to do properly.

13 MS. HARBOUR-VALDEZ: Very good. And you
14 promise you'll do that if you're selected?

15 MR. MOTT: Absolutely.

16 MS. HARBOUR-VALDEZ: Thank you. I'm going
17 to move on to reasonable doubt. You've heard a lot
18 about this, too, but I'm going to tell you that it
19 is -- the judge will give you instructions on all of
20 these things. I know some of these things are just
21 concepts that are out in the air right now, and we've
22 tried to hone in on it and not make it seem so
23 legalese, but it is the highest burden of proof in
24 our legal system. It is proof that is so convincing
25 that you would have to -- you would be able to rely

1 on it without any hesitation in the most important of
2 your life decisions.

3 As an example, it's a higher burden than
4 what we apply in child custody suits. It's a higher
5 burden than we apply in multimillion dollar lawsuits.
6 The one that I sat on in El Paso, it was just
7 preponderance of the evidence, more likely than not.
8 So this one is the highest in our legal system.

9 So Mr. Cooper did a little bit of this with
10 you, but I just want to make sure we're on the same
11 page.

12 Let's start with Mr. Milne. You would
13 agree with me that Mr. Troup cannot be found guilty
14 just because you think he probably committed some
15 type of criminal offense?

16 MR. MILNE: I agree.

17 MS. HARBOUR-VALDEZ: How about, he may have
18 submitted some offense. It's not getting there;
19 right?

20 MR. MILNE: Right.

21 MS. HARBOUR-VALDEZ: And the same thing is
22 that if you believe it's likely he committed some
23 other crime or engaged in some criminal activity,
24 that's not enough. That burden is so high, beyond a
25 reasonable doubt.

1 All right. Everybody is shaking their head
2 over there. I appreciate that.

3 And I'm asking these questions -- these are
4 questions that I ask in every criminal trial. And by
5 asking them, I certainly don't mean to imply that Mr.
6 Troup or any of these gentlemen may be guilty, or
7 even that it's possible that they're guilty, or it's
8 any kind of a close call. These are questions that
9 we have to ask. Because I want to know if, at the
10 close of the evidence, and for whatever reason, guilt
11 becomes a close call in your mind, that you're going
12 to be able to delineate, and you're going to be able
13 to weigh this and you're going to be able to follow
14 the law that Judge Browning is going to instruct you
15 regarding the burden of proof. It's going to have to
16 be that very, very high standard; not, well, maybe;
17 not probably, not likely. It's got to be beyond a
18 reasonable doubt.

19 Can everybody agree with me? Let me ask it
20 this way. Does anybody have a problem with that?
21 All right. I'm not seeing any hands.

22 Let me talk a little bit about it, because
23 we've got multiple defendants, obviously, with
24 multiple charges, so there may be different
25 reasonable doubts. Mr. Milne may have a reasonable

1 doubt as to something that Mr. Doom doesn't. You
2 don't have to agree on a reasonable doubt. You can
3 all hold your own reasonable doubt, and that's fine.
4 You may find something more compelling than Mr.
5 Telles. That's totally fine. So each of you can
6 have a different reasonable doubt. And you can have
7 a different reasonable doubt about the quality of the
8 proof as it relates to Mr. Troup or as it relates to
9 Mr. Patterson. It doesn't matter. A reasonable
10 doubt, your reasonable doubt that you hold onto, is
11 yours, and it doesn't have to be what anybody else
12 says.

13 Let me give you an example. You can have a
14 portion of someone's testimony that you think is
15 absolutely not believable. Do you think you could
16 have someone come on the stand, Mr. Troy, and you
17 just -- you know, "I didn't believe a thing out of
18 that guy's mouth."

19 Whereas Mr. Montoya might say, "You know
20 what? I believed some of it, but I didn't believe
21 all of it." It doesn't have to be the same portion
22 of that witness's testimony that you disagree on. If
23 you found it not credible, you found it not credible.
24 Does that make sense? Everybody agree with me on
25 that? Anybody have a problem applying that? Okay.

1 I think I'm good on reasonable doubt.

2 One more thing I want to say about
3 reasonable doubt. It can be based not only on the
4 evidence that you hear; it can also be based on
5 evidence that you didn't hear but that you thought
6 you should have heard, evidence that you needed to
7 hear. So it doesn't necessarily all come from
8 someone up here or some piece of evidence or some
9 testimony. You can get back there and when you're
10 deliberating, you can say, "Hum, that would have been
11 something good for the Government to present. I wish
12 I would have had that."

13 That could be a reasonable doubt. You can
14 be asking: Why didn't that piece of evidence --
15 where was that? That can be a reasonable doubt. So
16 it's not everything that you hear that you're going
17 to be weighing on whether it's a reasonable doubt.
18 There may be some things missing that you go back and
19 question yourself. Everybody okay with that concept?

20 All right. We talked a little bit about
21 the right to remain silent. I think we've kind of
22 gone into this a lot, so I just want to make sure
23 that everyone is good with the Fifth Amendment.
24 Everybody has got a right to remain silent. We've
25 talked about it.

1 The burden never shifts to this side of the
2 room. These guys don't have to do anything. They
3 can just be quiet and not ever tell their side of the
4 story, which is what a lot of you put on your
5 questionnaires; you'd like to hear both sides. We'd
6 all like to hear both sides, but in a criminal trial
7 under our Constitution, they don't have to do that.
8 I think everybody -- we've gone over that today.
9 Does anybody have any feelings that have changed
10 about that? Sitting here, hearing about the Fifth
11 Amendment? No? We're all good on that.

12 Okay. We've all heard a lot about problems
13 of crime. Mr. Beck asked about it. There is a lot
14 in the media about being tough on crime. Obviously,
15 none of us like crime. That's a given. We talked to
16 some of you at the bench yesterday. It's crime, of
17 course. Nobody likes crime.

18 We've also heard comments from the media
19 about technicalities and maybe people getting off on
20 technicalities. One thing I want to make clear. I
21 don't know what people mean by that. Everybody has
22 their own observations about what a technicality may
23 be, but I do want you to understand this. The
24 presumption of innocence, the burden of proof, and
25 the requirement of proof beyond a reasonable doubt --

1 those aren't technicalities. Those are fundamental
2 constitutional rights that everyone in this country
3 enjoys. They're just as important as our First
4 Amendment rights, our Second Amendment rights, any of
5 the other -- freedom of speech, freedom of religion.
6 That's what I'm talking about. They're just has
7 important. Those are fundamental rights.

8 Does anybody think of these rights as
9 anything other than that? Any technicalities here?

10 Mr. Doom? I have to say that in reading
11 your questionnaire, I thought you might be a
12 constitutional scholar. You've got a good grasp on
13 some of the basic rights. Would you agree with me
14 that these are not technicalities? These are
15 strongly held and hard fought for?

16 MR. DOOM: Absolutely. They're absolutely
17 necessary, so I hold onto them dearly.

18 MS. HARBOUR-VALDEZ: And they're necessary
19 to ensure that these gentlemen get a fair trial.

20 MR. DOOM: Absolutely. That's why they can
21 be presumed innocent and they have to be proven
22 guilty before we change our mind.

23 MS. HARBOUR-VALDEZ: Very good. Let me
24 move on to -- I touched a little bit about this. But
25 we've talked about multiple defendants, multiple

1 charges. So we need to talk about -- Mr. Cooper
2 touched on whether a gang leader can be held
3 responsible for other people in the gang. I want to
4 talk about guilt by association. That's a huge
5 elephant in the room. Obviously, you're going to
6 hear testimony that these gentlemen were part of a
7 group, but we need to make sure that they're not just
8 going to be lumped together; they're not just going
9 to be, well, they're part of a gang, they're guilty.

10 So let me talk to you a little bit about
11 this. Let's go with Mr. Telles. What does that mean
12 to you, guilt by association?

13 MR. TELLES: Well, I think that every
14 individual would have to be proven -- the evidence
15 would have to be presented that each individual
16 partook in whatever the allegation is, so -- and
17 unless that can be proven, you know, the leader,
18 whoever may have been up at the top at the time,
19 won't actually be charged.

20 MS. HARBOUR-VALDEZ: Okay. Do you see
21 that -- where guilt by association might be
22 inconsistent with what we have been talking about
23 today on the presumption of innocence? Can you see
24 that conflict there?

25 MR. TELLES: I guess I can.

1 MS. HARBOUR-VALDEZ: And you would agree
2 with me that's wrong; these gentlemen -- they're all
3 individuals?

4 MR. TELLES: Very true, yes.

5 MS. HARBOUR-VALDEZ: And you're going to
6 hear some evidence -- as an example, you're going to
7 hear some evidence that may be -- evidence as to Mr.
8 Patterson that may not have anything to do with
9 Mr. Arturo Garcia. What we need to ensure is that
10 you can separate that out and you wouldn't hold Mr.
11 Patterson responsible for something that came in
12 against Mr. Arturo Garcia.

13 MR. TELLES: I understand, yes.

14 MS. HARBOUR-VALDEZ: Okay.

15 Ms. Reser, do you have any problem
16 separating that out, seeing how it may be evidence as
17 to one defendant but not evidence as to another?

18 MS. RESER: Not a problem, as such. But
19 I'm definitely going to have to define, you know,
20 which accusations are against which defendant, and
21 not cross lines when it's not needed. You know,
22 sometimes -- I'm assuming sometimes it will cross
23 over. But I will be judging based on what I heard
24 this particular person give, not necessarily what his
25 neighbor down the road did.

1 MS. HARBOUR-VALDEZ: And you can do that
2 for us?

3 MS. RESER: I fully intend to, if I get the
4 chance.

5 MS. HARBOUR-VALDEZ: Okay. Ms. Griego?
6 What are your thoughts on that?

7 MS. GRIEGO: Why did you let me use that
8 notebook you talked about?

9 MS. HARBOUR-VALDEZ: Exactly. Okay. Good.
10 Very good.

11 MS. DWORE: I have a question.

12 MS. HARBOUR-VALDEZ: Okay. Ms. Dwore.

13 MS. DWORE: If evidence is going to be
14 presented which applies to more than one of the
15 defendants, and the defense is not making a case, are
16 you going to in any way help us to sort this out?
17 Because it would be possible -- unintentional, of
18 course, but possible -- for the prosecution to
19 present things in such a manner that it would be
20 difficult.

21 MS. HARBOUR-VALDEZ: What I will say about
22 that is that the judge will be giving instructions
23 throughout the trial. And I have no doubt those
24 instructions will guide you as to how to apply that
25 evidence, who it should be applied against, and we'll

1 give you those instructions. So does that answer
2 your question?

3 MS. DWORE: Yes.

4 MS. HARBOUR-VALDEZ: Does anybody else
5 sitting over in the jury box have an issue with the
6 guilt by association? Anybody have a problem, I
7 should say, that they can't hold each individual
8 defendant here as an individual? You can only look
9 at what applies to Mr. Troup and not apply that over
10 to Mr. Billy Garcia. Anybody have a problem with
11 that?

12 How about the first row? Ms. Beavers, any
13 problem with that?

14 Mr. Niemeier? No issues there?

15 Ms. Duncan? No?

16 I'm going to move on to law enforcement
17 witnesses. We've talked a lot about it, but I know a
18 lot of you in your questionnaires told us that you
19 would give them more weight. We've explored that.
20 The judge has explored that with you, and I think a
21 lot of you have come around and explained it. But I
22 do need to make sure.

23 Mr. Telles, I'm sorry, I'm jumping back
24 over to you because I think you said that law
25 enforcement has no reason to lie, and -- I may have

1 you run another round -- and Mr. Skousen, come back
2 to you, because you said they have no motive to lie.

3 So to both you gentlemen, what if you heard
4 evidence that an officer was less than candid? Given
5 how you'd feel, what you told us on your
6 questionnaire, how would you weigh that? How would
7 you feel?

8 MR. TELLES: Well, with all the discussion
9 that's taken place these last couple of days, it's
10 definitely opened my eyes that any individual could
11 actually sit up and tell a story, and of course, the
12 evidence that would be presented would be how I make
13 my -- how I determine whether that individual was
14 actually lying or not.

15 MS. HARBOUR-VALDEZ: But you've come around
16 to see that it can happen?

17 MR. TELLES: It can happen, yes.

18 MS. HARBOUR-VALDEZ: There are reasons that
19 people might lie?

20 MR. TELLES: Yeah, very true.

21 MS. HARBOUR-VALDEZ: And Mr. Skousen, like
22 I said, yours was no motive to lie.

23 MR. SKOUSEN: Yeah, I think that I was
24 incorrect in that statement. Because there could be
25 motive in order to try to make a case for something.

1 There could be some motive to not tell the truth
2 entirely. So I think it's very important to look at
3 the situation, the contents of the testimony, and all
4 the evidence around that. That would corroborate it.

5 MS. HARBOUR-VALDEZ: Okay. And along those
6 lines with the law enforcement witness, what kind of
7 information would be important for you to know or
8 to -- in order to determine whether you thought that
9 officer was being untruthful or was altering his
10 testimony in some way?

11 MR. SKOUSEN: Well, is there a possibility
12 for him to have a hidden agenda, an alternate agenda,
13 something else that that officer is trying to promote
14 that would plead to some kind of motive to not be
15 completely honest or to be dishonest in their
16 testimony.

17 MS. HARBOUR-VALDEZ: Okay. Mr. McKinzie,
18 same question. What kind of information would you
19 need? What would be important for you to hear to
20 determine if you thought an officer was being
21 untruthful or altering --

22 MR. McKINZIE: Evidence that is presented
23 that clearly contradicted what the police officer
24 said, so if he was lying or mistaken, then yes.

25 MS. HARBOUR-VALDEZ: How would you decide

1 if a law enforcement witness was crossing the line?

2 MR. McKINZIE: It would have to be case by
3 case.

4 MS. HARBOUR-VALDEZ: Nothing concrete?
5 Nothing jumps out at you?

6 Okay. Mr. Brugger. Do you believe that --
7 obviously, law enforcement witnesses can make
8 mistakes. You would agree with that?

9 MR. BRUGGER: Sure.

10 MS. HARBOUR-VALDEZ: Okay. What do you
11 think an officer should do when they realize a
12 mistake has been made? Anything that you would
13 expect a witness to do in that instance?

14 MR. BRUGGER: If the law enforcement
15 witness made a mistake? They should own up to it and
16 tell the supervisor.

17 MS. HARBOUR-VALDEZ: All right. Anybody
18 else have an issue? Like I said, I don't want to
19 keep asking the same questions on law enforcement. A
20 lot of you, I know, have changed your minds and came
21 around and thought you can keep an open mind. Nobody
22 has varied from that position; right? Except maybe
23 Ms. Morales. I think you've made your feelings clear
24 at the bench. Has anything changed from that
25 conversation?

1 MS. MORALES: No.

2 MS. HARBOUR-VALDEZ: Mr. Granberg talked
3 about it a little bit. I do want to touch on the
4 deliberations. I said no one is going to ask you to
5 let go of your strongly held beliefs. No one is
6 asking you to surrender your viewpoints or your
7 opinions.

8 Let's see. Dr. Marquardt. You would agree
9 with me that once you get back in the jury room, none
10 of you are beholden to the others; correct?

11 DR. MARQUARDT: Right.

12 MS. HARBOUR-VALDEZ: You're all going in
13 there, 12 individuals who come in with all your
14 different life experiences. What if you got back in
15 deliberations and somebody just said, "You know, I
16 can't decide. I think we should just defer to the
17 FBI agent, and let's get this over with."

18 What would your duty be, given all the
19 legal principles that we've discussed today, these
20 important constitutional rights? What would you have
21 to say to that fellow juror?

22 DR. MARQUARDT: Go back through that
23 evidence and see if that evidence is believable, is
24 there anything about that evidence that doesn't ring
25 true, and see if that changes their opinion about

1 that testimony. That's going to be the answer.

2 MS. HARBOUR-VALDEZ: Would you agree with
3 me that you might have to have a discussion about
4 whether the presumption of innocence might play into
5 that? That you can't just say, "Well, forget it,
6 let's just rely on this one guy, he sounded the most
7 believable"?

8 DR. MARQUARDT: Just the one guy, no. The
9 presumption of innocence is there until all the
10 evidence is discussed and worked through. But that
11 presumption of innocence is going to be there until
12 we get to that point.

13 MS. HARBOUR-VALDEZ: Okay. Does anyone
14 else think differently about that? I believe, Mr.
15 Johnson, I know that you had said something about
16 that. Let me find your exact comment. If other
17 jurors felt the same way, you might have to go along
18 with it. But you're going to go in there with your
19 own beliefs, you're going to go in there with your
20 own opinions.

21 MR. JOHNSON: Yes.

22 MS. HARBOUR-VALDEZ: And you're going to
23 hold on to those?

24 MR. JOHNSON: It depends on the evidence
25 and what the other jurors are saying. I mean,

1 generally I'm going to hold to what I believe, but
2 I'm also going to keep an open mind and maybe get
3 some good critical feedback from some of the other
4 people, and again, with presumed innocence.

5 MS. HARBOUR-VALDEZ: And we're not asking
6 you not to an open mind. Obviously, we want you to
7 keep an open mind. We just don't want anybody to
8 feel bullied or feel like they have to go along to
9 get along. Does that make sense?

10 MR. JOHNSON: People don't mess with me.

11 MS. HARBOUR-VALDEZ: I gathered that, based
12 on some of your responses.

13 MR. JOHNSON: Thank you.

14 MS. HARBOUR-VALDEZ: I just have a few
15 follow-ups with some individuals.

16 Mr. Troy, you had told us that your
17 son-in-law worked at the Santa Fe facility?

18 MR. TROY: Yes.

19 MS. HARBOUR-VALDEZ: Was it just during
20 that time period '98 to 2000?

21 MR. TROY: Correct.

22 THE COURT: And no other law enforcement
23 experience after that?

24 MR. TROY: No.

25 THE COURT: Okay. Thank you.

1 Mr. Telles, on your questionnaire you said
2 your ex-wife worked for the U.S. Attorney's Office?

3 MR. TELLES: Yes.

4 MS. HARBOUR-VALDEZ: When was that?

5 MR. TELLES: Oh, 1990 or maybe '93.

6 MS. HARBOUR-VALDEZ: What did she do there?

7 MR. TELLES: She was a paralegal, I
8 believe, is what she was.

9 MS. HARBOUR-VALDEZ: But you don't know any
10 of the attorneys sitting at this table based on --

11 MR. TELLES: No, I do not.

12 MS. HARBOUR-VALDEZ: And no one else in the
13 U.S. Attorney's Office you know currently?

14 MR. TELLES: No.

15 MS. HARBOUR-VALDEZ: Was that here in Las
16 Cruces or in El Paso?

17 MR. TELLES: Las Cruces.

18 MS. HARBOUR-VALDEZ: Ms. Williams, I didn't
19 get to talk to you. You said you worked at Desert
20 Springs. That's in Hobbs or in Jal?

21 MS. WILLIAMS: It's in Hobbs. It's a
22 nursing home rehab center.

23 MS. HARBOUR-VALDEZ: Do you know Rocky
24 Swain, by any chance? Rocky and Harold Swain?

25 MS. WILLIAMS: I do not.

1 MS. HARBOUR-VALDEZ: Okay. I have some
2 cousins in Jal and Hobbs, and I had an elderly
3 great-uncle who was at that facility. So that's why
4 I was asking; maybe you knew them.

5 While you've got the mic, nothing about the
6 issues that you talked about with your family members
7 on the questionnaire, being involved with maybe some
8 drugs in the past -- nothing about that situation is
9 going to affect your ability to be a fair and
10 impartial juror here?

11 MS. WILLIAMS: No.

12 MS. HARBOUR-VALDEZ: Ms. Scifres, you said
13 that your husband worked in some type of security?

14 MS. SCIFRES: Yes, but he no longer works
15 there.

16 MS. HARBOUR-VALDEZ: All right. Thank you.
17 Before you pass it, is it your father-in-law and your
18 nephew that were in law enforcement?

19 MS. SCIFRES: Yes.

20 MS. HARBOUR-VALDEZ: And where were they in
21 law enforcement?

22 MS. SCIFRES: Roswell Police Department.

23 MS. HARBOUR-VALDEZ: Anything about that
24 experience, having law enforcement in your family,
25 that would affect your ability to be fair and

1 impartial?

2 MS. SCIFRES: No.

3 MS. HARBOUR-VALDEZ: Have you ever talked
4 to them about their line of work or things that they
5 do or see?

6 MS. SCIFRES: No.

7 MS. HARBOUR-VALDEZ: Let's see.
8 Ms. Trujillo.

9 MS. TRUJILLO: Yes.

10 MS. HARBOUR-VALDEZ: On your questionnaire
11 you said there was someone in your family, maybe your
12 brother, who was APD?

13 MS. TRUJILLO: Yes, he was a stater for
14 about two and a half years and he's currently APD.

15 MS. HARBOUR-VALDEZ: Anything about his
16 line of work that causes you any concern of being
17 fair and impartial in this case?

18 MS. TRUJILLO: No.

19 MS. HARBOUR-VALDEZ: Do you talk to him
20 about his work?

21 MS. TRUJILLO: Sometimes he'll bring home
22 stories, but...

23 MS. HARBOUR-VALDEZ: Nothing that you've
24 heard so far over these last two days that rings a
25 bell? You don't have any recollections of any of

1 these defendants or these charges?

2 MS. TRUJILLO: No, ma'am.

3 MS. HARBOUR-VALDEZ: Okay.

4 Mr. Kimmick, you said that your fiance does
5 health care at the detention center. Which detention
6 center was that?

7 MR. KIMMICK: She was for a time before we
8 were involved working at Hidalgo County. Also at
9 Grant County. And she finished up in Sterling,
10 Colorado, in Logan County, and she no longer works
11 for them.

12 MS. HARBOUR-VALDEZ: Anything about her
13 experiences at those facilities, specifically in New
14 Mexico? You never heard any stories or discussed
15 any --

16 MR. KIMMICK: No, ma'am. She wasn't
17 willing to go through and lose her job by disclosing
18 anything about any of the inmates.

19 MS. HARBOUR-VALDEZ: You also said that you
20 had an uncle who was undercover state police;
21 correct?

22 MR. KIMMICK: Yes.

23 MS. HARBOUR-VALDEZ: Nothing about that
24 experience, no stories, war stories?

25 MR. KIMMICK: Not allowed to tell any of

1 them, and I would have been too young to hear them.
2 He passed away in the early 2000s.

3 MS. HARBOUR-VALDEZ: Sorry about that.
4 Thank you, though, for answering those questions.

5 Mr. Carrillo, you said that you had prior
6 jury service, and it looked like it was over several
7 months. Can you shed some light on that?

8 MR. CARRILLO: Well, you have to do jury
9 duty for six months, so you get called.

10 MS. HARBOUR-VALDEZ: Was it grand jury or
11 was it just like the rotating jury in the state
12 courts?

13 MR. CARRILLO: In Silver City, the county,
14 I guess.

15 MS. HARBOUR-VALDEZ: And were you ever
16 selected to serve?

17 MR. CARRILLO: I got selected, and then
18 they had a mistrial.

19 MS. HARBOUR-VALDEZ: Okay. You may have
20 told us that, and I apologize. I didn't write that
21 down. Thank you.

22 Mr. Meyer, several times on your
23 questionnaire you mentioned that you were a special
24 agent, I believe, for the New Mexico Human Services
25 Department?

1 MR. MEYER: Yes, I was.

2 MS. HARBOUR-VALDEZ: I know welfare fraud,
3 but what other law enforcement type duties would you
4 say you had?

5 MR. MEYER: Mostly welfare fraud. A couple
6 criminal cases I investigated, but it was mostly
7 welfare fraud. We went to administrative hearings
8 and I presented criminal cases to grand juries once
9 in a while.

10 MS. HARBOUR-VALDEZ: So you testified
11 before a grand jury?

12 MR. MEYER: Yes.

13 MS. HARBOUR-VALDEZ: I know Mr. Sindel is
14 going to talk about grand jury, so I'm not going to
15 step on his toes. I'm sure he'll follow up with you
16 about that. But anything about your experience as an
17 agent in law enforcement that would cause you
18 concern?

19 MR. MEYER: No, nothing at all.

20 MS. HARBOUR-VALDEZ: You can be fair and
21 impartial to these seven gentlemen sitting here?

22 MR. MEYER: Yes, I can.

23 MS. HARBOUR-VALDEZ: And they're presumed
24 innocent right now in your eyes?

25 MR. MEYER: Yes.

1 MS. HARBOUR-VALDEZ: If we were going to
2 take a vote right now, what would the vote be?

3 MR. MEYER: The vote -- you mean with
4 everybody here?

5 MS. HARBOUR-VALDEZ: No, guilty or not
6 guilty.

7 MR. MEYER: It's an open slate right now.

8 MS. HARBOUR-VALDEZ: Well, no, it's not
9 guilty right now.

10 MR. MEYER: No, it's not guilty.

11 MS. HARBOUR-VALDEZ: Remember, I talked
12 about that. We're not on a level playing field. We
13 are not guilty, not guilty, not guilty until you all
14 get back in that jury room and start deliberations.
15 I can't stress that enough. Everybody agree with me?

16 Okay. Is there anything that I haven't
17 asked you about? I know all the lawyers have asked
18 you this, but is there anything I haven't asked or
19 that wasn't covered in that 20-page questionnaire or
20 hasn't been covered over the last two days that you
21 think we might need to know about? Any reason why
22 you couldn't be fair and impartial to Mr. Troup or
23 any of these other gentlemen?

24 Well, I do want to thank you. I tried to
25 make it quick. I don't know how successful I was.

1 But jury service obviously -- I said it once at the
2 beginning -- it's the cornerstone of our government.
3 Your participation is what makes it possible. I
4 appreciate that, and I'm going to thank you in
5 advance for those of you who are selected to serve
6 with us and get to work over the next eight weeks.
7 We do appreciate your time and we appreciate your
8 attention, and we look forward to working with you.

9 THE COURT: Thank you, Ms. Harbour-Valdez.

10 Why don't we take about a 15-minute break,
11 and let's try to keep it right at 15. Then we'll get
12 maybe another 25, 30 minutes of work in before we
13 call it a day.

14 All right. We'll be in recess for about 15
15 minutes.

16 (The venire panel left the courtroom.)

17 THE COURT: All right. Before we take our
18 break, I'm in agreement -- the Court is in agreement
19 with the parties that Ms. Chavez, number 3, should be
20 excused. So we'll excuse her for cause. Is that
21 what everybody has agreed on, Mr. Beck?

22 MR. BECK: Yes, Your Honor.

23 THE COURT: The defendants are all in
24 agreement. The Court's also in agreement that
25 Ms. Trujillo should be excused. Right, Mr. Beck?

1 MR. BECK: Yes, Your Honor.

2 THE COURT: The defendants are?

3 MS. HARBOUR-VALDEZ: Yes, Your Honor.

4 THE COURT: So I'm going to have them
5 brought back in, and we'll let them go at the end of
6 the day. So I don't want anybody to start thinking
7 anything.

8 Now, as far as Ms. Griego, we've agreed
9 that she's going to go, and I'm going to let her go
10 now so her husband doesn't have to catch a bus. And
11 we're going to go ahead and tell the people that are
12 waiting downstairs they can leave for the day.
13 Everybody in agreement with that?

14 MR. BECK: Yes.

15 MR. COOPER: Yes, Your Honor.

16 THE COURT: Let's take a quick break and
17 see if we can get more done this afternoon.

18 You're up next, Mr. Sindel?

19 MR. SINDEL: Yes.

20 (The Court stood in recess.)

21 THE COURT: All right. Let's get in our
22 seats so we can try to get the jury in. All right.
23 Everybody ready? Okay. We'll bring the jury in.

24 (The venire panel entered the courtroom.)

25 THE COURT: All right. If y'all would take

1 your seats in the seats that you've had the last two
2 days, we'll try to get about another 20 minutes'
3 worth of work in before we break for the day. I
4 appreciate everybody's patience and working with us.

5 All right. Appreciate everybody coming
6 back in. We'll work about another 20 minutes and
7 shut down for the day.

8 Mr. Sindel, do you have additional voir
9 dire on behalf Joe Lawrence Gallegos?

10 MR. SINDEL: Yes, I do, Your Honor.

11 THE COURT: Mr. Sindel.

12 MR. SINDEL: Well, I've got good news and I
13 have bad news. The good news is: This day is
14 finally drawing to a close. The bad news is: You're
15 going to hear from me again tomorrow. So you know,
16 bear with me. You've got 15 or 20 minutes to cover.
17 I can tell you're all just, like, fried and your
18 brains are a little bit like the white noise you hear
19 when you're sitting in here and we're up at the
20 bench. Can we all agree on one thing, that that
21 sound is horrible? And may I see some hands? Okay.

22 That may be the last thing you agree with
23 me about, but we'll hang onto that and I want to tell
24 you how much we (inaudible).

25 The other thing is: I think you need to

1 know a little bit about me. I don't know why, but it
2 will kill some time. So here it is. I'm not from
3 Texas. I'm not from New Mexico. I'm not from
4 Colorado. All of these people that come from all
5 these exotic places. I come from Missouri. I come
6 from St. Louis, Missouri. UMKC right there; right?
7 How long -- where did you live? Did you live in
8 Kansas City, Ms. Pellegrino?

9 THE REPORTER: I'm sorry, I can't hear.
10 Where's the mic?

11 MR. SINDEL: These guys are on Fitbit.

12 DR. PELLEGRINO: I grew up in St. Charles.

13 MR. SINDEL: So you went from St. Charles,
14 which is not a suburb but it is close to St. Louis;
15 correct?

16 DR. PELLEGRINO: Correct.

17 MR. SINDEL: And then you went to UMKC for
18 a four-year degree?

19 DR. PELLEGRINO: Yes.

20 MR. SINDEL: And you said what that degree
21 is, but I'm fried.

22 DR. PELLEGRINO: Dentistry. General
23 dentistry.

24 MR. SINDEL: And was there a particular
25 reason you went to Kansas City instead of --

1 DR. PELLEGRINO: In-state tuition. Oh, for
2 dental school? In-state tuition. There was a dental
3 school there. Well, not anymore.

4 MR. SINDEL: So I'm from St. Louis,
5 Missouri. Okay? That's where I'm from. And I have
6 been practicing law there for about 50, 60, 70 years.
7 So if I start to quiver up here, you kind of know
8 why. Coming to this part of the country, did you
9 find kind of a culture shock?

10 DR. PELLEGRINO: So I was actually born in
11 Albuquerque, so I'm a New Mexican, so no.

12 MR. SINDEL: So you moved around a little
13 more than I did.

14 Well, the reason I come from Missouri is
15 because some of the judges in Missouri have told
16 judges in other states that I might be a reasonably
17 good prospect to try complicated cases. So I
18 thought, what a compliment that is. I felt great and
19 then I discovered they just wanted to kick me out of
20 Missouri.

21 So here I am. Bear with me. Now, there's
22 a couple others. I don't speak Spanish, and I don't
23 always do so well with the names. So in fact, I'm
24 learning Spanish here, but I've only learned it by
25 way of proper names, so if I mispronounce a name, I

1 apologize right at this moment, because I will
2 probably do that. I was in court once, and I called
3 my client Mr. "gal-LAY-goes." And a marshal came up
4 to me and said, "You don't do that. It's
5 "gah-YAY-goes." I had to apologize to him in open
6 court. He still has not forgiven me.

7 The other person I'm with here is Brock
8 Benjamin. We call him Cowboy Brock. You'll hear
9 from him later on this week because he's a terrific
10 lawyer and he's going to help present the case that
11 we have for Mr. Gallegos.

12 Do you want to hear some truth? Our job is
13 Mr. Gallegos. That's who we're going to be fighting
14 for. That's the truth. The judge will never
15 instruct you on what weight to give any piece of
16 evidence. You will never hear from the judge how you
17 are supposed to weigh the evidence. That's your job.
18 That's your job as individuals, that's your job as a
19 collective jury. That's the truth.

20 The other thing that I will never suggest
21 to you, because I think it just totally is opposite
22 to my own beliefs. In St. Louis, where I live, I
23 have been picked to sit on a venire panel. So I know
24 somewhat what it's like. I know when the benches
25 start to feel hard, I know when your brain starts to

1 fuzz out. I know what it's like.

2 My daughter, who is a young lawyer
3 practicing in Chicago -- she has also sat in, when
4 she was in St. Louis, on a jury panel. I've never
5 been picked. She has. I think that tells you
6 something. But I know what it is like to do that.

7 And people come to me, my friends, other
8 people I know, and they said, "I've just got a
9 summons for jury duty. Can you get me out of it?"

10 And I say, "No. I'm going to do it, my
11 daughter is going to do it, it is our sacred
12 obligation, and I will never tell you what answers
13 you can give to help you get out of jury duty,
14 because that shouldn't happen." You should be proud
15 to be here and part of this process, despite how
16 difficult it is, despite --

17 This process is called voir dire. Okay?
18 It's a French term. Really good lawyers call it
19 "vwah deer." It means to tell the truth. I think it
20 means to bore to death. But that's what has to
21 happen, because without this process, without these
22 questions, without this probing, we don't know. Look
23 at how many of you have taken this opportunity and
24 learned something. I hear it almost in every single
25 answer in this room. I walked in here with one

1 belief, I was carrying one set of beliefs; they were
2 powerful, they were strong, and I have rethought
3 those beliefs, and I have given some credence to what
4 I have learned from what the prosecutor has said,
5 from what the defense lawyers have said, and in
6 particular, from what the judge has said.

7 So this entire process, I believe you.
8 You've got to know, you're telling me under oath that
9 you now have a different perspective on how the
10 system works.

11 Now, I want to see over here the hands of
12 those people who, when they answered the
13 questionnaire, said, "Well, they must have some
14 evidence, so there must be some reason or they
15 wouldn't have brought the charges." Because I know
16 you did. There you go. Yes, sir. Anyone else over
17 here had written that in their questionnaire, "They
18 can't be here for nothing; something had to be done."

19 Mr. Telles, did you put that in yours?

20 MR. TELLES: Actually --

21 MR. SINDEL: There we go, the St. Louis
22 dude. Sorry.

23 MR. TELLES: Yes, I guess when I did answer
24 the questionnaire, that was one of my answers. But
25 there again, I've learned a lot in the last two days

1 that I've been here.

2 MR. SINDEL: Almost everybody did, you
3 know, because it's a natural thing. You know, over
4 on this side, on the right side, similar. You came
5 into this courtroom on Monday, you answered those
6 questions, and you said, They must have done
7 something; correct. True?

8 On the left side, same thing?

9 Now, the court reporter up here, she takes
10 down all the words, and there are things that I ask
11 as a group. And sometimes, you know, I don't want to
12 go and get "yes" answers from everyone, so sometimes
13 I'll answer for you. But I have to see that you're
14 with me. So, for example, I'll say over here to the
15 jury box, "Is that true?" If you nod your heads, I
16 know you're with me, and I can say, "I assume from
17 your responses that the answer is yes."

18 Same thing over here. If you shake your
19 head, nod your head, I just need to know you're with
20 me so that the record is clear.

21 So the right side, pretty true? Left side,
22 pretty true?

23 And there was a question, I think, about
24 the grand jury, and the grand jury heard this case.
25 Now, I think it was Mr. Krohn in between various

1 jousting matches he said, "We heard that -- the old
2 maxim, a grand jury can indict a ham sandwich."

3 MR. KROHN: Yes, I said that.

4 MR. SINDEL: And that's because the concept
5 is: The grand jury is under the almost complete
6 control of the prosecution, state or federal; right?

7 MR. KROHN: That's what I understand.

8 MR. SINDEL: Now, there aren't any ham
9 sandwiches here. These are all men, and these are
10 all men whose lives will be forever affected by what
11 occurs in this courtroom. So let's talk a little
12 bit, if you will, about a grand jury.

13 Grand jury is selected from the community.
14 They usually sit for a long period of time, maybe six
15 months. And those grand jurors here -- and there's
16 more than 12; there's a number of them -- will hear
17 an incredible number of cases. And I think we have
18 one grand juror sitting right there, don't we?
19 Ms. Beavers?

20 MS. BEAVERS: Um-hum.

21 MR. SINDEL: And you were on a grand jury.
22 I'll wait for you to get the microphone. When did
23 you serve on a grand jury?

24 MS. BEAVERS: I don't remember the exact
25 year, but it's probably at least 15 years ago.

1 MR. SINDEL: Do you know what happened or
2 how you happened to get selected? What was your
3 lucky star?

4 MS. BEAVERS: Because I seem to have a
5 lucky star to be selected on juries.

6 MR. SINDEL: I think that any jury should
7 have your statute there because you've sat on more
8 juries.

9 MS. BEAVERS: I began to think that, too.

10 MR. SINDEL: So when you were on the grand
11 jury, did you ever see a time when they were
12 presenting the evidence to you where a police officer
13 generally presented it as if, this was what Bob,
14 John, or Bill told me?

15 MS. BEAVERS: Yes. Like I say, it's been
16 quite a while. I remember some things being
17 presented in evidence. But as you said, it was
18 pretty one-sided.

19 MR. SINDEL: But they don't bring in all
20 the witnesses?

21 MS. BEAVERS: No.

22 MR. SINDEL: You didn't hear from 150
23 people, like are listed here; right?

24 MS. BEAVERS: No.

25 MR. SINDEL: They bring in somebody to give

1 a summary of what -- the evidence they thought;
2 correct?

3 MS. BEAVERS: They presented some evidence
4 from -- they did do some things.

5 MR. SINDEL: And most of the times that was
6 a police officer or some combination --

7 MS. BEAVERS: Or the district attorney.

8 MR. SINDEL: Is that correct?

9 MS. BEAVERS: Yes.

10 MR. SINDEL: How many times, if you can
11 recall, during the grand jury process did a lawyer
12 represent the defense view. Would that be never?

13 MS. BEAVERS: I don't remember for sure,
14 offhand. I'm thinking no, but I'm thinking there
15 might have been a possibility.

16 MR. SINDEL: So it may have been as much as
17 one time out of all?

18 MS. BEAVERS: Really, it was a while ago.

19 MR. SINDEL: Okay. This is not a test.
20 Let me ask you, do you remember approximately how
21 long you performed, had to serve on the grand jury?

22 MS. BEAVERS: It was the county grand jury,
23 and I think it was a year service, I remember.

24 MR. SINDEL: So you were on for a whole
25 year, and you would go in and you would hear cases?

1 MS. BEAVERS: It was consistent, you know,
2 once a month or --

3 MR. SINDEL: And the lawyer who was there
4 in the grand jury room was the prosecutor; correct?

5 MS. BEAVERS: Yes.

6 MR. SINDEL: How many times did the
7 prosecutor call any witnesses on behalf of the
8 defendant that you can recall? Would it be fair to
9 say very similar to the number of times you recall a
10 defense lawyer being there to advocate for the
11 defendant? One, maybe zero?

12 MS. BEAVERS: Honestly I can't recall.

13 MR. SINDEL: Well, the grand jury process
14 is not a process that has a lawyer to advocate for
15 the defendant. It is not a process where the
16 defendant has any choice about whether to present
17 evidence or argument or testimony. The grand jury is
18 a tool for the prosecutor to begin to bring the cases
19 forward, and that's what a grand jury does.

20 And that's why you have to wonder and
21 believe that perhaps the grand jury didn't receive
22 all the evidence, all the argument, and all the
23 necessities that go into the making of the
24 determination as to whether or not someone should be
25 charged with a crime and to whether -- most

1 importantly, whether they could have been convicted.

2 So you understand that that process that
3 some of you relied on in making a determination about
4 whether or not something happened and these men did
5 something was skewed entirely against them and in the
6 favor of the Government. You're all understanding
7 that over here on the right? Do you understand on
8 the left, and here in the jury box?

9 I'm going to do one little thing, and then
10 I think we're pretty close to the end. You know, Mr.
11 Kimmick, I listened to your statements the other day
12 about your pretty bizarre experiences as a college
13 security guard. Do you recall that? I know you
14 recall it. Does everyone else recall when he found
15 himself on the working end of something like a
16 faucet?

17 MR. KIMMICK: Yeah, I have very fond, warm
18 memories of that.

19 MR. SINDEL: I'm sure warm is more
20 appropriate.

21 MR. KIMMICK: More appropriate.

22 MR. SINDEL: So I thought to myself, you
23 know, what is there in this gentlemen's questionnaire
24 that would give me a clue as to how that occurred?
25 And one of the questions that you were asked was: In

1 what ways, if at all, might your religious or
2 philosophical beliefs affect your service as a juror?
3 And your answer, and I quote, "I have an ability to
4 look past a person's image, personality, to find out
5 the truth about someone in a situation."

6 So my question to you is this. Can you
7 teach me how to do that?

8 And my second question is: If you have
9 that ability, why didn't you move your leg?

10 MR. KIMMICK: Because I'm Episcopalian.

11 MR. SINDEL: Stole my thunder.

12 MR. KIMMICK: I've seen this movie before.
13 I know how it ends.

14 MR. SINDEL: Your Honor, I think I'd like
15 to end on a high note, if I may.

16 THE COURT: See y'all tomorrow. 8:30.
17 I'll come get you out front.

18 (The venire panel left the courtroom.)

19 THE COURT: All right. Y'all have a good
20 evening. See you at 8:30 in the morning.

21 MR. TROUP: You too, Judge. Thank you.

22

23

24

25

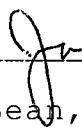
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 16th day of July, 2018.

13
14 
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